

**ANNUAL REPORT
OF THE
ENVIRONMENTAL QUALITY
SERVICE COUNCIL**

**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

December, 1999

INDIANA LEGISLATIVE COUNCIL

1999

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Bernadette Bartlett
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Environmental Quality Service Council (EQSC) is required by P.L. 248-1996 to do the following:

- (1) Advise the Commissioner of the Indiana Department of Environmental Management (IDEM) on policy issues decided upon by the EQSC.
- (2) Review the mission and goals of IDEM and evaluate the implementation of the mission.
- (3) Serve as a council of the General Assembly to evaluate:
 - (A) resources and structural capabilities of IDEM to meet IDEM's priorities; and
 - (B) program requirements and resource requirements for IDEM.
- (4) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.
- (5) Submit a final report to the Governor, the General Assembly, the Budget Committee, and the Administrative Rules Oversight Committee each year that contains:
 - (A) an outline of activities of the EQSC;
 - (B) recommendations for any IDEM action;
 - (C) recommendations for any legislative action; and
 - (D) an estimate of funding levels required by IDEM, including an evaluation of permit fees.

The Legislative Council assigned the following topics to the EQSC for study during the 1999 interim period:

- (1) Study the feasibility of an air emissions reduction credit program (HEA 1561).
- (2) Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds (HEA 1578).
- (3) Review the hazardous waste manifest program (HEA 1578).
- (4) Study whether IDEM should allow a transition period associated with the Risk Integrated System of Closure (RISC) guidance document (HEA 1919, SECTION 22).
- (5) Study ground level ozone formation (HR 110, HR 80).
- (6) Study benefits to air quality associated with the use of alternative fuels and alternative fueled vehicles (HCR 115).
- (7) Study the relationship of air and soil quality to certain diseases in urban areas (HCR 14)

The EQSC was also mandated by law to do the following in 1999:

- (1) Review IDEM's proposed non-rule policy document on air emissions of styrene (HEA 1919, SECTION 21).
- (2) Review the permit accountability time frames outlined in IC 13-15-4-1 and make legislative recommendations, if appropriate. (HEA 1919, SECTION 19)
- (3) Receive annual reports from IDEM on the use of environmental audit reports and on the use and effectiveness of the enforcement policy providing relief from civil penalties for certain voluntary disclosures (HEA 1919, SECTION 16; IC 13-28-4-11).

(4) Receive IDEM's presentation on the enforcement policy providing relief from civil penalties for certain voluntary disclosures (HEA 1919, SECTION 18).

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 1999 were conducted to discharge the EQSC's various responsibilities under:

- P.L. 248-1996;
- the other acts imposing responsibilities on the EQSC; and
- the Legislative Council's mandate to the EQSC.

III. SUMMARY OF WORK PROGRAM

A. APPOINTMENT AND ACTIVITIES OF THE SUBCOMMITTEES

At the first 1999 meeting of the EQSC, Senator Beverly Gard, the Chairperson of the EQSC, exercised her authority under P.L. 248-1996, SECTION 1(h) to designate subcommittees. The following four Subcommittees were established:

The Air Subcommittee
The IDEM and Public Health Subcommittee
The IDEM Administrative Issues Subcommittee
The Land and Water Subcommittee

Senator Gard appointed the following as Subcommittee chairpersons:

Air Subcommittee: Senator Kent Adams
IDEM and Public Health Subcommittee: Senator Vi Simpson
IDEM Administrative Issues Subcommittee: Representative David Wolkins
Land and Water Subcommittee: Senator Beverly Gard

Senator Gard appointed each member of the EQSC to serve as a member of one or two Subcommittees. She also appointed individuals who were not EQSC members to be "advisory members" of the Subcommittees.

Senator Gard assigned each Subcommittee one or more of the EQSC's 1999 study topics. The Subcommittee assignments were as follows:

- Air Subcommittee:
- HEA 1561: a potential air emissions reduction credit program.

- HEA 1919: emissions of styrene (EQSC must review IDEM non-rule policy).
- HR 110, HR 80: ground level ozone formation.
- HCR 115: the benefits to air quality associated with the use of alternative fuels and alternative fueled vehicles.

IDEM Administrative Issues Subcommittee:

- HEA 1578: Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds.
- HEA 1919: Review and make recommendations on permit accountability time frames.
- HEA 1919: Look at IDEM enforcement policy that would provide relief from civil penalties for voluntary disclosure that results from a voluntary internal audit.

IDEM and Public Health Subcommittee:

- HCR 14: Study the relationship of air and soil quality to certain diseases in urban areas.

Land and Water Subcommittee:

- HEA 1919: Study whether IDEM should allow a transition period associated with the RISC guidance document.
- HEA 1578: Review the hazardous waste manifest program.
- SB 343: Continue to look at water-related issues.

Senator Gard also granted the each Subcommittee chairperson the discretion to study topics other than those assigned to the Subcommittee.

Each Subcommittee of the EQSC met at the call of its chairperson. The Subcommittees heard testimony and received recommendations from their members and others. The IDEM and Public Health Subcommittee, the Air Subcommittee, and the Land and Water Subcommittee submitted written reports to the EQSC. **[These reports are attached to this Final Report as Appendix 1, Appendix 2, and Appendix 3.]**

The Air Subcommittee held three meetings on the following dates:

August 2, 1999
September 2, 1999
September 29, 1999

In addition, the Air Subcommittee met as a workgroup studying the potential establishment of an Indiana air emissions credit program on the following dates:

August 24, 1999
September 22, 1999
November 8, 1999

The IDEM Administrative Issues Subcommittee met once on August 4, 1999.

The IDEM and Public Health Subcommittee held three meetings on the following dates:

August 5, 1999
October 13, 1999
November 4, 1999

The Land and Water Subcommittee held four meetings on the following dates:

July 29, 1999
September 3, 1999
October 14, 1999
November 19, 1999

The minutes of these Subcommittee meetings are available on the World Wide Web at <http://www.state.in.us/legislative/interim/committees/> or are available by contacting the Legislative Services Agency at the address and telephone number listed on this report.

B. ACTIVITIES OF THE FULL EQSC

The EQSC held six meetings on the following dates:

June 29, 1999
August 10, 1999
September 9, 1999
October 21, 1999
November 23, 1999
December 7, 1999

The EQSC's meetings are summarized below:

The first EQSC meeting provided a general overview of the duties and responsibilities of the EQSC. The four Subcommittees were formed. Speakers explained the status of the litigation challenging the new, stricter federal particulate matter and ozone standards.

The second EQSC meeting focused on brownfields redevelopment programs. Representatives of the State of Pennsylvania Office of Land Recycling provided information on their state program's history, design, and implementation and on the technical standards of their program. Chairpersons also reported on the status of their respective Subcommittees.

The third meeting included a discussion of the regulation of underground storage tanks in Indiana and a discussion of the status of Indiana's solid waste management districts. IDEM replied to a list of requests and recommendations that were submitted to IDEM by

members of the EQSC in 1998, explaining the actions taken by IDEM in response to these requests and recommendations.

The fourth meeting included a report on the IDEM Water Quality Advisory Group by John Fekete, its Chairman; a presentation by Crowe Chizek and Company, LLP, consultant to IDEM with respect to the allocation of the costs of services supported by IDEM dedicated funds; a presentation by Greta Hawvermale, Program Manager, the Indiana Development Finance Authority, on the program to provide grants and loans to political subdivisions for identification, assessment, remediation, other costs involved in the redevelopment of brownfields; and status reports from the four Subcommittees.

At its fifth meeting, the EQSC received, discussed, and took action on the reports and recommendations of its four Subcommittees.

At the sixth and final 1999 EQSC meeting, Robert W. Lazard and Scott R. Nickerson of Crowe Chizek and Company, LLP, reported on the results of Crowe Chizek's study of the allocation of the costs of services supported by IDEM dedicated funds; Ginny Mahoney reported on the subgroup she headed, which studied the brownfields and voluntary cleanup statutes of other states; and Commissioner Lori Kaplan commented on the EQSC's recommendations. The EQSC also discussed and voted to approve this Final Report.

In addition, at each monthly meeting of the EQSC Lori Kaplan, Commissioner of IDEM, presented her monthly report in compliance with P.L. 248-1996, SECTION 1(k).

IV. SUMMARY OF TESTIMONY

First Meeting - June 29, 1999:

Lori Kaplan, the Commissioner of IDEM, addressed the EQSC on the operations and activities of IDEM over the six month period ending on May 31, 1999. She distributed:

- a summary of the IDEM's outreach, education, and assistance activities over the six month period;
- a summary of recent IDEM rulemaking activities;
- a statement of the total fees collected by IDEM in the first five months of 1999, in 1998, and in 1997;
- a report on the timeliness of IDEM's issuance of permits;
- press releases issued by IDEM during the six month period; and
- a summary of 1999 legislation affecting IDEM.

Commissioner Kaplan emphasized that IDEM has not been late in the issuance of a permit since

October of 1998, a period of seven months; that IDEM's proposed new rule establishing ground water quality standards is advancing in the rule adoption process; and that several public meetings have been held concerning IDEM's proposed rule on animal confined feeding operations, which is expected to become effective this fall.

Commissioner Kaplan discussed IDEM's efforts to establish its next two-year plan, which will be set forth in IDEM's next Environmental Partnership Performance Agreement with the Region 5 office of the U.S. EPA. Commissioner Kaplan explained and then invited comments on IDEM's strategic priorities.

Commissioner Kaplan then discussed 1999 legislation affecting IDEM and, in particular, legislation that established topics for study by the EQSC. She made the following comments about the EQSC's 1999 study topics:

- With respect to the topic of the feasibility of an air emission reduction credit program (HEA 1561): IDEM will be happy to host a discussion of this subject among interested parties.
- With respect to the topic of the hazardous waste manifest program (HEA 1578): IDEM is willing to discuss potential recommendations concerning this program.
- With respect to the topic of permit accountability time frames (HEA 1919): IDEM recommends that the current program should continue. IDEM has tried to use the permit-by-rule option as much as possible to accelerate permit issuance.
- With respect to the topic of a proposed non-rule policy addressing air pollution emissions from sources of styrene (HEA 1919): IDEM is working on the non-rule policy as required by legislation and will report to the EQSC about it.
- With respect to the topic of whether a person who applies before December 31, 1999 for authority to perform an environmental investigation, remediation, or closure should, if the person so chooses, be subject to the requirements in effect before the publication of IDEM's RISC document (HEA 1919): IDEM is reviewing this matter and will be prepared to report to the EQSC about it.
- With respect to the topic of an EQSC study to evaluate different approaches for determining the allocation of the costs of all department services that support dedicated funds (HEA 1578): IDEM has proposed that a third party be hired to conduct this study.
- With respect to the requirements (HEA 1919) that IDEM (a) maintain certain statistics on the use of environmental audit reports; (b) propose an enforcement policy that provides relief from civil penalties for certain voluntary disclosures; and (c) report annually to the EQSC on its use of environmental audit reports and the effectiveness of the enforcement policy: IDEM will report to the EQSC on these matters.

Two speakers, Janet McCabe and Bernie Paul, addressed the EQSC on the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027.

Janet McCabe, Assistant Commissioner and head of the IDEM's Office of Air Management, made the following points about the *American Trucking* case:

- Until 1997, the nation's ozone standard was 125 parts per billion, measured over one hour. In July of 1997, the EPA developed a stricter ozone standard of 85 parts per billion measured over *eight* hours, as well as a new standard for particulates. Litigation challenging the new ozone and particulates standards was initiated.
- In September of 1998, the EPA directed 22 states, including Indiana, to develop plans by September 1999 to reduce emissions of nitrogen oxides. Indiana and seven other states initiated litigation challenging the EPA's nitrogen oxide directive and seeking a six month extension of time within which to develop their emissions reduction plans.
- IDEM, in compliance with the EPA's mandates, (1) formed regional ozone steering committees for seven urban areas of Indiana to develop measures needed to meet the new ozone standard and (2) began the adoption of rules to reduce nitrogen oxide emissions.
- On May 14, 1999, the U.S. Court of Appeals for the District of Columbia made the first of two decisions affecting these EPA mandates when it issued its opinion in the *American Trucking* case. The Court decided that the construction of the Clean Air Act on which the EPA relied in promulgating the new ozone standard constituted an unconstitutional delegation of legislative power. The Court did not nullify the new ozone standard altogether, but required the EPA to reconsider the standard and made the standard temporarily unenforceable.
- On May 25, 1999, in its second decision, the Court granted the states' motion for a stay of the deadline for submitting their nitrogen oxide emissions reduction plans, pending the Court's decision on the merits of the case.
- The EPA is appealing the Court's decision on its new ozone standard and the Court of Appeals has not yet rendered a substantive decision on the nitrogen oxide emissions reduction plans, so both matters are now in limbo. Indiana has developed a proposed rule based on the new ozone standard, but final adoption of the rule is on hold for now. And Indiana is continuing to develop a nitrogen oxide emissions reduction plan, using the extra time granted by the Court to work toward a plan that will achieve needed reductions in a sensible way.

Bernie Paul of Eli Lilly and Company made the following points about the *American Trucking* case:

- Some think that the *American Trucking* decision represents an important new limit on federal rulemaking, but others think not. In his opinion, the *American Trucking* decision sent a message that the EPA may no longer be given as much leeway in rulemaking as it formerly was, at least when the economic implications are as great as in the case of the new ozone standards. The decision said that the EPA, in setting standards, can't just pick a number but must justify the number selected.
- In *American Trucking* the Court did not vacate the ozone standard but merely told the EPA to rethink and justify its decision. It is possible that this ruling will lead to a reevaluation of the ozone standard. In his opinion, however, any reevaluation would

- come, if at all, after the presidential election.
- Indiana will eventually be subject to an ozone standard similar to, if not the same as, the eight hour standard involved in the *American Trucking* case. So Indiana must continue to prepare.
- In his opinion, the discussions of the regional ozone steering committees formed by IDEM must go forward. The steering committees should decide on measures to meet the more stringent ozone standard, including such things as controls on urban growth and restrictions on the use of certain fuels for areas designated “non-attainment” for ozone.

Public comment was also accepted at the meeting.

Second Meeting- August 10,1999:

Commissioner **Lori Kaplan** presented her Commissioner’s report for the month of July.

Commissioner Kaplan provided an overview of Indiana’s brownfields program. She and **Dana Reed Wise**, IDEM’s Brownfields Program Section Chief, made the following points:

- IDEM has completed 22 brownfield environmental assessments for units of local government to date, exceeding its goal of 20, and has spent more than \$150,000 completing the assessments.
- IDEM has assisted in the redevelopment of over 100 brownfield sites to date, exceeding its goal by eight.
- Under the Indiana Brownfields Grant and Loan Program, IDEM and the Indiana Development Finance Authority (IDFA) have reviewed 67 applications and awarded 54 site assessment grants and two loans. The total amount awarded in grants exceeds \$1.5 million; loans equal \$550,000.
- IDEM has conducted 12 brownfields workshops, has published three issues of *the Brownfields Bulletin*, and has established a brownfields web page.
- IDEM has established the Interagency Brownfields Task Force, which brings together representatives of IDEM, the Indiana Departments of Health, Commerce, Natural Resources, and Transportation, and IDFA. Within this task force an Interagency Brownfields Advisory Team has been formed to provide direct assistance to communities.
- IDEM has completed a non-rule policy document regarding the issuance of a Qualified Contaminated Site statement for purposes of the federal brownfields tax incentive.

Thomas Fidler, Chief of the Land Recycling and Cleanup Program of the Pennsylvania Department of Environmental Protection, discussed the background, purposes, and structure of the Program. He made the following points:

- The Pennsylvania Land Recycling Program was established through legislation enacted in 1995, the product of a three-year bipartisan effort. Its purposes are to make contaminated sites safe, to return these sites to productive use, and to preserve farmland and

greenspace.

- The Land Recycling Program changed the process by which a site could be cleaned up; simplified the procedure for the approval of a proposed cleanup project; established certain standards that must be met in a cleanup; provided for notification of the public regarding a proposed cleanup; provided grants and low-interest loans to assist “innocent” parties in conducting voluntary cleanups; and relieved the owner or developer of potential responsibility for further cleanup of a site when the applicable standard is attained.
- To qualify for the limitation on further cleanup responsibility, anyone proposing to clean up a site is required to select one or a combination of three environmental remediation standards:
 - (1) The Background Standard, which requires the removal of a contaminant from a site, but limits the removal requirement to the extent that the contaminant’s presence at the site is not related to any release of the contaminant at the site (i.e., some quantity of the contaminant may have entered the site from an outside source).
 - (2) The Statewide Health Standard, which uses a list of minimum cleanup levels for various contaminants. The cleanup levels are based on maximum allowable concentrations of each contaminant for each specific environmental medium.
 - (3) The Site-Specific Standard, under which cleanup levels are developed specifically for the individual site based on the contaminants, exposures, and conditions unique to that site.
- Since 1995, the Land Recycling Program has led to 551 site cleanups. Of these, 39 used the Background Standard, 416 used the Statewide Health Standard, 69 used the Site-Specific Standard, and 27 sites were cleaned up under the pre-1995 category of “special industrial area”.
- The Land Recycling Program is staffed by approximately 120 field agents and 25 in-house managers and scientists. The amount of \$10 to 12 million is expended each year to fund the Program’s grants and low-interest loans.
- There is currently no listing of Pennsylvania brownfield sites, but a new initiative is to create a directory of brownfield sites available for purchase, cleanup and redevelopment.

Craig Robertson, the Chairman of the Cleanup Standards Scientific Advisory Board of the Pennsylvania Land Recycling Program, discussed selected technical elements of the Land Recycling Program. His presentation included the following points:

- The 1995 legislation that established the Pennsylvania Land Recycling Program borrowed concepts from the regulations of Michigan and Texas. It is a strong, comprehensive statute that provides the direction and specificity necessary to establish a system offering the use of three different cleanup standards.
- The Cleanup Standards Scientific Advisory Board was established by the 1995 legislation to help the Pennsylvania Department of Environmental Protection develop statewide health standards to be used in the Land Recycling Program and provide advice on other matters. The Board played an important role in the establishment of the Program’s

- cleanup standards.
- The regulations establishing the specific details of the cleanup standards were finalized in July, 1997. A final Technical Guidance Manual was completed in December, 1997. Revisions to the regulations and the Technical Guidance Manual are pending.
- A key element of the Land Recycling Program is the potential recognition, in a cleanup conducted under the Statewide Health Standard, that an aquifer involved in the cleanup is not currently used for drinking or agricultural purposes and there are no plans for the aquifer's future use for drinking or agricultural purposes. Such an aquifer is referred to as a "non-use aquifer." The recognition of non-use aquifers makes possible the cleanup of many sites (such as abandoned service stations) that would otherwise not be cleaned up.

Public comment was also accepted at the meeting.

Third Meeting- September 9, 1999

Commissioner **Lori Kaplan** presented her monthly report to the EQSC. She reported that IDEM issued no late permits in August and that the merger of IDEM's Office of Emergency Response and Office of Solid and Hazardous Waste Management into a single entity named the Office of Land Quality will take effect on September 19, 1999.

At Senator Gard's request, Commissioner Kaplan commented on a number of matters that were raised in EQSC intern Jeff Miller's written summary of the EQSC requests and recommendations directed to IDEM in 1998. Her comments included the following points:

Concerning the recommendations of the 1998 EQSC Underground Storage Tank Subcommittee:

- As suggested by the Subcommittee, IDEM published a nonrule policy document on its penalty policy relating to underground storage tanks in April of 1999.
- There is now an Abandoned Tank Community Assistance Program to assist local governments in the removal or closure of underground storage tanks that have been abandoned by their former owners. A total of \$500,000 has been allocated to the program for 1999-2001.

Concerning the recommendations of the 1998 EQSC RISC (risk integrated system of closure) Subcommittee:

- As suggested by the Subcommittee, IDEM will allow a transition period before the full implementation of the RISC requirements.
- IDEM has established a RISC Advisory Group to discuss key issues pertaining to the RISC Technical Manual and User Guides. The first meeting of the Advisory Group is scheduled for Sept 22.

Concerning the recommendations of the 1998 EQSC Non-point Source/Agriculture

Subcommittee:

- IDEM has increased its coordination with the Indiana Department of Health in relation to septic systems.
- IDEM and the Department of Health have held joint meetings and workshops on septic tank issues.

Concerning the recommendations of the 1998 EQSC IDEM Staffing Subcommittee:

- IDEM has upgraded its environmental attorney positions and is in the process of evaluating its chemist positions for an upgrade.
- By converting temporary positions to full-time positions, IDEM has increased its full-time staff by 80 persons.

In response to a question from Senator Gard, Commissioner Kaplan said that IDEM is still considering ways of using existing staff more efficiently. She cited as an example the creation of IDEM's Office of Land Quality through the merger of two previously separate offices. She pointed out that Indiana is far ahead of the other states in US EPA Region 5 in the issuance of permits under Title V of the 1990 Clean Air Act Amendments. She also pointed out that IDEM has undergone a permit re-engineering process designed to improve efficiency and shorten time frames, and has taken steps to create permits-by-rule or "general" permits where appropriate in order to free up staff to concentrate on other areas.

Felicia George, the Assistant Commissioner in charge of IDEM's Office of Enforcement, provided the EQSC with additional information on IDEM's underground storage tank (UST) program. She made the following points:

- Under UST regulations that went into effect on December 22, 1998, every UST that is not properly protected against spills, overflows, and corrosion must be upgraded, replaced, or properly closed.
- Before December 22, 1998, IDEM conducted an intensive outreach effort to ensure that owners and operators of USTs knew of the impending requirements.
- Since December 22, 1998 IDEM has inspected UST sites to determine whether tank owner/operators had upgraded or closed their tanks or taken advantage of the one-year temporary closure option. Of 2340 USTs determined not to have been upgraded, IDEM has inspected 1740 and will inspect the remainder before Oct 31, 1999.
- The 1740 inspections have led to 14 warning letters for minor compliance discrepancies and 17 referrals to the Office of Enforcement.
- IDEM will now focus on the 678 UST sites whose owner/operators took advantage of the one-year closure option. IDEM will ensure that those USTs are properly closed or upgraded.
- Indiana has experienced a high rate of compliance with the UST requirements. The compliance rate has been high across the country.

In answer to questions from Representative Wolkins and other EQSC members, Commissioner

Kaplan and Deputy Commissioner Tim Method provided the following additional information about the Abandoned Tank Community Assistance Program:

- County governments may apply for financial assistance from the program. So may cities, towns, townships, and their member groups (such as economic development committees).
- Communities whose applications are accepted receive approximately \$10,000 per site. This sum is based on the cost of removing an UST, not the cost of remediations and cleanup. If a site is found to be contaminated after removal or closure of the UST, the community might be referred to the brownfields redevelopment program for further assistance.

Stan Pinegar, Executive Director of the Indiana Petroleum Council, called IDEM's underground storage tank program a success and expressed appreciation for being given the opportunity to work on the program in 1998 through the EQSC's Underground Storage Tank Subcommittee.

Mike Pitts of the Indiana Petroleum Marketers and Convenience Store Association concurred in Mr. Pinegar's comments. He also stressed the need for IDEM to be vigilant in reviewing the 678 UST sites whose owner/operators took advantage of the one-year closure option.

Jim Mahern, Assistant Commissioner in charge of IDEM's Office of Pollution Prevention and Technical Assistance, discussed Indiana's solid waste management districts.

Mr. Mahern distributed a fact sheet on the Indiana Recycling Grants Program, informing the EQSC that IDEM offers several types of grants to solid waste management districts, including grants for basic education and promotion projects; grants for model solid waste management projects; and grants for household hazardous waste reduction, collection, and disposal programs.

Mr. Mahern next distributed a fact sheet entitled "Economic Need: District Un-Encumbered Cash Balance as of 12/31/98." He explained that IDEM considers the unencumbered cash balance of a solid waste management district as an indicator of the district's economic need when considering grant applications.

Finally, Mr. Mahern distributed a fact sheet entitled "Indiana Solid Waste Disposal: Analysis of % Diversion - Estimate," which presented several types of information on the generation and disposal of solid waste in Indiana for the years 1993 through 1998.

Bruce Palin, Deputy Commissioner and head of IDEM's Office of Land Quality, stated that the estimated "permitted capacity" of permit-holding solid waste disposal facilities located in Indiana has increased in recent years and was recently estimated to be sufficient to accommodate Indiana's disposal needs for 10 to 12 years.

Mr. Palin reported that in 1998 well over two million tons of solid waste generated in other states was imported into Indiana for disposal, while only 237,162 tons of solid waste generated in

Indiana was disposed of in other states. He added that the amounts currently being imported to Indiana from other states for disposal are comparable to amounts imported in the early 1990's, when the importation of solid waste was a high profile issue, but the sources have shifted – the chief source in the early 1990's was the east coast and currently the chief source is the Chicago area.

IDEM Deputy Commissioner **Tim Method** commented that Indiana is working with 7 or 8 other states at the federal level toward the passage of legislation that would give states control over the importation of solid waste.

Representative Wolkins, referring to the “Analysis of % Diversion” fact sheet, made this observation: the figures show that we are not winning the war on waste. He noted, in particular, that the total amount of solid waste disposed of in Indiana has grown each year since 1993, and that the percentage of the state's solid waste being diverted from disposal is falling short of the goals set in the state solid waste management plan.

Commissioner Kaplan spoke briefly about solid waste-related educational efforts being carried out by IDEM. Lynn Waters commented that the generation of solid waste seems to be related to the economy: the more prosperous people are, the more things they buy, and the more they throw away. Ginny Mahoney expressed regret that consumers seem to have lost their interest in less wasteful packaging.

EQSC member Lynn Waters, the Director of the LaPorte County Solid Waste Management District, then introduced **Mark Davis**, the Executive Director of the Association of Indiana Solid Waste Districts. Mr. Davis made the following points:

- The amount of solid waste being generated in Indiana has increased. But the amount of the increase would be much greater without IDEM's reduce and recycle programs.
- In the solid waste generation and diversion figures presented to the EQSC, Indiana “suffers from its own honesty.” The figures would be more favorable if Indiana inflated them like some other jurisdictions do.
- Regarding the use of unencumbered cash as an indicator of a the economic need of a solid waste management district (SWMD):
 - ▶ SWMDs, which were created under a law enacted in 1990, are relatively “young” institutions, and some that rely on a property tax levy for funding have been forced to set the tax rate according to a “guesstimate,” which may for a time produce somewhat greater funds than needed.
 - ▶ Any SWMD that relies on property taxes for its income will receive its funds only twice per year; a high balance of unencumbered cash shortly after the SWMD receives its twice-yearly disbursement of tax proceeds does not necessarily indicate a lack of economic need.
 - ▶ The income stream of a SWMD is subject to change. For example, a SWMD that derives its income from disposal fees will experience a sharp drop in income

when a landfill located in the district closes.

Mr. Davis mentioned the following in a discussion of “good and bad things going on” with respect to SWMDs:

- SWMDs have taken a leading role in recycling programs, including new programs for discarded electronics equipment.
- Some SWMDs have permanent facilities for the handling of household hazardous waste. Twenty-five have regular “tox away days.”
- SWMDs have spearheaded the Mercury Awareness Program (MAP).
- Almost two-thirds of the SWMDs are involved in composting. The LaPorte County SWMD has a contract with the state for the composting of waste from a state prison.
- SWMDs are involved in education and outreach.
- Public/private partnerships involving SWMDs have created new business opportunities.
- There are “haves” and “have nots” among SWMDs. Some SWMDs have funding mechanisms in place and are able to raise ample funds; others have insufficient resources.
- Illegal Dumping remains a significant problem in Indiana. IDEM has not been able to pay sufficient attention to this problem due to staffing limitations. Perhaps SWMDs could fill this void.

Lynn Waters then spoke about her experiences as Director of the LaPorte County SWMD. She made the following points:

- Curbside recycling dramatically increases the success rate of a recycling program.
- The sufficiency of a SWMD's funding can depend on the presence of a landfill within the district and “brave elected officials.”
- A task force should be created to look into the funding of SWMDs. It should include representatives of the Association of Indiana Solid Waste Districts and legislators who are members of the EQSC.
- SWMDs have a couple of serious problems, but they tend to be successful if properly supported.

Nelson Becker of the National Solid Waste Management Association made the following points:

- Due to the lack of information on which to base them, the recycling goals set when the state solid waste management plan was adopted may have been “just a nice number.”
- Recycling is going on, and IDEM and the SWMDs have done a good job in promoting it.
- Outside factors affect the extent of recycling activity. For example, the Asian market for recycled paper recently dipped. And when people spend more, there is more trash.
- Indiana does receive much solid waste from out of state, much of it from Illinois, but the third largest city in Indiana sends its waste to Michigan and some eastern Indiana communities send their waste to Ohio.
- Indiana still has 10-to-12 years of landfill capacity, which is far more than we, in 1990, would have expected to have in 1999. We're in pretty good shape, but we must continue to develop end uses of solid waste.

Glenn Pratt, a resident of Indianapolis, discussed problems affecting recycling within his city. He said that units of local government should be encouraged to promote recycling.

Kerry Manders expressed concern over the problem of illegal dumping and asked what could be done to prevent it.

Public comment was also accepted at the meeting.

Fourth Meeting- October 21, 1999

Commissioner **Lori Kaplan** presented her monthly report. Commissioner Kaplan and Deputy Commissioner Tim Method answered questions about the availability of IDEM information on IDEM's web site.

John Fekete, the Chairman of the IDEM Water Quality Advisory Group, discussed the activities and progress of the Advisory Group, the current goals of which include making recommendations to IDEM on:

- how to manage those Indiana streams currently designated as outstanding state resource waters;
- a procedure for evaluating and designating other waters for special designations;
- whether IDEM should propose sediment and biological narrative water quality criteria; and
- whether IDEM should propose alternative water use designations for wet weather events, when cities with combined sewers are forced to discharge untreated effluent into receiving streams.

Greta J. Hawvermale, Program Manager of the Indiana Development Finance Authority (IDFA), spoke about the Indiana Brownfields grant and loan program, which provides grants and loans to political subdivisions for identification, assessment, remediation, and other costs involved in the redevelopment of brownfields. She provided the following information:

- The Brownfields grant and loan program was established under IC 13-9-5 in 1997.
- IDFA, under the program, has awarded 63 site assessment grants totaling nearly \$1,700,000 and processed six loans totaling \$765,000. Grants and loans have gone to forty-one Indiana communities.
- Communities responding to a survey conducted by IDFA reported the existence of 3,133 brownfields in Indiana.
- A Forgivable Loan Program has been established in response to 1999 House Enrolled Act 1909. HEA 1909 authorizes the forgiveness of up to 20% of the amount of a loan made to a political subdivision for remediation or other brownfield activities.
- Forgivable loans for three communities have been approved so far.
- IDFA and IDEM have conducted a number of outreach activities, including presentations,

individual meetings, site visits, and conference calls.

Ms. Hawvermale and **Dana Reed Wise**, IDEM's Brownfields Program Section Chief, answered questions from Senator Gard about the cleanup of brownfields sites identified and assessed through the Brownfields program.

Courtney Tobin, the Executive Director and General Counsel of IDFA, spoke briefly about IDFA's Underground Storage Tank program, under which IDFA makes grants to low income operators of underground storage tanks for the removal of the tanks.

Senator Kent Adams, the Chairperson of the EQSC Air Subcommittee, presented a written "Report of the Air Subcommittee," copies of which were distributed to those in attendance. Senator Adams explained that the Air Subcommittee was assigned four issues for study during 1999; that he, as Subcommittee Chairperson, invited the members of the Subcommittee to submit written recommendations as to each of the issues; that staff prepared a written compilation of the members' recommendations, which was discussed at the Subcommittee meeting of September 29; and that staff then prepared the "Report of the Air Subcommittee" as a compilation of the members' recommendations. Senator Adams pointed out that the Air Subcommittee did not vote on whether to endorse any of these recommendations and therefore the inclusion of a recommendation in the Report should not be interpreted as a sign that a majority of the Subcommittee members supports the recommendation.

Senator Gard drew the attention of the EQSC to the printed "Subcommittee Status Reports" of the IDEM and Public Health Subcommittee and the IDEM Administrative Issues Subcommittee, and then presented the Land and Water Subcommittee's printed Status Report.

Finally, the EQSC heard a presentation by Crowe Chizek and Company, LLP, the consultant to IDEM with respect to the subject of HEA 1578, SECTION 8: the allocation of the costs of services supported by IDEM dedicated funds. Making the presentation for Crowe Chizek were **Robert W. Lazard**, CPA, Managing Executive, and **Scott R. Nickerson**, Senior Engagement Manager.

Mr. Lazard and Mr. Nickerson discussed their firm's study of IDEM's administrative cost allocation methods and the impact of those methods on dedicated funds. They offered an outline of their study which listed the following steps:

- (1) Conduct individual interview sessions
- (2) Dedicated funds: analyze operational and program activities
- (3) Dedicated funds: analyze financial activity
- (4) Agency wide services: analyze budgetary and cost allocation components
- (5) Report preparation

Public comment was also accepted at the meeting.

Fifth Meeting- November 22, 1999

Commissioner **Lori Kaplan** presented her monthly report, discussing IDEM's outreach, education, and assistance activities for the month of October and other aspects of recent IDEM activity.

David Parry and **Jeff Zickgraf** of IDEM made a presentation on IDEM's new Internet-based Permit Guide, which is intended to provide permit applicants and the general public with information on environmental permits.

Senator Simpson, the Chairperson of the IDEM and Public Health Subcommittee, presented a Report setting forth the recommendations of her Subcommittee:

Recommendation #1: ESTABLISH A PILOT DATABASE PROGRAM.

Recommendation #2: IMPROVE INDIANA'S EXISTING HEALTH INFORMATION DATABASES.

Recommendation #3: REPLACING FAILING SEPTIC SYSTEMS WITH CONNECTIONS TO CITY SEWER SYSTEMS.

Recommendation #4: STRENGTHEN THE LAW PROHIBITING THE SALE OF TOBACCO TO MINORS.

[The Report of the IDEM and Public Health Subcommittee is attached to this Final Report as Appendix 1. See also Part V of this Final Report, Committee Actions and Recommendations.]

EQSC members discussed these recommendations.

Senator Simpson made a motion that the EQSC should, in the year 2000, study the effects of failing septic systems on public health, perhaps through a subcommittee. This motion was adopted by consent. A motion to accept the entire IDEM and Public Health Subcommittee Report was also adopted by consent.

Senator Kent Adams, the Chairman of the Air Subcommittee, presented the Report of the Air Subcommittee to the EQSC. This report, he explained, sets forth several recommendations with respect to each of the four issues assigned to the Air Subcommittee for study:

- (1) A potential air emissions reduction credit program. [HEA 1561]
- (2) Air emissions of styrene. [HEA 1919]
- (3) Ground level ozone formation. [HR 110, HR 80]
- (4) Alternative fuels and alternative fuel vehicles. [HCR 115]

As he had at the October 21 meeting, Senator Adams explained that he, as Chairman, invited the members of the Subcommittee to submit written recommendations as to the Subcommittee's issues; that staff compiled the members' recommendations; that the compilation was discussed at the Subcommittee meeting of September 29; and that the members' recommendations comprise the Subcommittee's Report.

Senator Adams emphasized this point: Because the Air Subcommittee did not vote on whether to endorse any of the recommendations in the Report, the inclusion of a recommendation in the Report should not be interpreted as a sign that the Subcommittee -- or a majority of the Subcommittee's members -- endorses the recommendation. The Report is a compilation of recommendations submitted to the Subcommittee.

Senator Adams read through the report, highlighting the points of major significance. A motion was then made to take action on the Report. On a point of clarification, Senator Gard said that the EQSC, in acting on the motion, was voting only on accepting the Subcommittee Report, and not voting on endorsing any of the various recommendations contained in the Report. The motion to accept the report was adopted by consent.

[The Report of the Air Subcommittee is attached to this Final Report as Appendix 2. See also Part V of this Final Report, Committee Actions and Recommendations.]

Senator Gard, as Chairperson of the Land and Water Subcommittee, then presented the Report of the Land and Water Subcommittee. She explained that her Subcommittee, in preparing its Report to the parent body, received several proposed recommendations pertaining to the issues studied by the Subcommittee, and that the Subcommittee voted to endorse some of the recommendations it received. However, the Subcommittee did not reject any of the proposed recommendations it received, and Senator Gard wanted all of the recommendations submitted to be incorporated into the Subcommittee's report. Therefore, the Subcommittee's Report sets forth some recommendations that were endorsed by the Subcommittee and others that were not.

[A revised version of the Report of the Land and Water Subcommittee is attached to this Final Report as Appendix 3. See also Part V of this Final Report, Committee Actions and Recommendations.]

Moreover, Senator Gard explained that, at the Land and Water Subcommittee meeting of November 19, she invited anyone having views contrary to those expressed in the water-related recommendations endorsed by the Subcommittee to submit their views in writing. IDEM Deputy Commissioner Tim Method submitted written comments in response to this invitation, and Senator Gard directed staff to include Mr. Method's comments in the EQSC's final report.

[Mr. Method's comments are included in the Revised Report of the Land and Water Subcommittee, which appears as Appendix 3 to this Final Report.]

Following the discussion of the water-related recommendations that had been endorsed by the Land and Water Subcommittee, the EQSC, by consent, acted to accept the entire Report of the Land and Water Subcommittee.

Finally, Representative David Wolkins, the Chairman of the IDEM Administrative Issues Subcommittee, presented a Subcommittee Status Report on his Subcommittee, which listed the following issues that were assigned to the Subcommittee for study in 1999:

Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds. [HEA 1578]

Review and make recommendations on permit accountability time frames. [HEA 1919]

Look at IDEM enforcement policy that would provide relief from civil penalties for voluntary disclosure that results from a voluntary internal audit. [HEA 1919]

The Subcommittee Status Report indicated that the deadline for the submission of recommendations on the first issue was November 1, 2000; that the consultant studying the second issue is scheduled to report to the EQSC on December 7, the EQSC's final meeting for 1999; and that the EQSC had no deadline for the submission of recommendations on the third issue, but was required only to receive annual reports from IDEM. Representative Wolkins asked that the IDEM Administrative Issues Subcommittee be allowed to continue its work in the year 2000.

IDEM Deputy Commissioner Tim Method pointed out that the first issue assigned to the IDEM Administrative Issues Subcommittee ("Study different approaches to the allocation of costs of services supported by certain IDEM dedicated funds") had implications as to IDEM's budget, and he therefore requested that the Subcommittee's work on that issue be concluded in the year 2000 by April or May.

Senator Gard made a motion to continue the IDEM Administrative Issues Subcommittee to the interim period of the year 2000 and to recommend that the Subcommittee conclude its study of the allocation of costs of services supported by certain IDEM dedicated funds in time to accommodate IDEM's budget-related deadlines. This motion was adopted by consent.

Rep. Wolkins' Status Report on the IDEM Administrative Issues Subcommittee was then also adopted by consent.

[The Status Report of the IDEM Administrative Issues Subcommittee is attached to this Final Report as Appendix 4. See also Part V of this Final Report, Committee Actions and Recommendations.]

Public comment was also accepted at the meeting.

Sixth Meeting- December 7, 1999

Robert W. Lazard, CPA, and **Scott R. Nickerson** made a presentation on behalf of Crowe Chizek, LLP, entitled "Indiana Department of Environmental Management: Assessment of Administrative Cost Allocation Methods."

Mr. Lazard spoke about his firm's study of the subject raised in HEA 1578, SECTION 8: Allocation of the costs of services supported by IDEM dedicated funds. His comments included the following:

- a review of the scope of his firm's assignment as contractor to IDEM;
- a review of the concept of cost allocation;
- a discussion of current IDEM practices with respect to cost allocation;
- examples of various cost allocation methods; and
- recommendations concerning IDEM's cost allocation practices.

In explaining the concept of cost allocation, Mr. Lazard said that certain "agency-wide services" - such as administrative services, legal services, and public policy and planning services -- need to be performed for the benefit of the whole agency. Since these services support the entire agency, he said, the cost of providing these services should be allocated to every branch of the agency.

Mr. Lazard provided the following information about three particular cost allocation methods:

(1) Activity-based costing: This requires identifying costs or functions and allocating them to specific products or services. It is the most precise method of cost allocation but is also the most complicated. It would not be practical for IDEM to employ this method.

(2) Simple Cost Allocation: Under this method, simple *cost allocators* (such as direct expenditures per program, number of employees per program, total salaries and wages per program, or number of square feet of office space used per program) are used to allocate costs. The problem with this method is that it assumes that all programs are homogenous. IDEM's programs are not homogenous.

(3) Direct and Indirect Pool: Under this method, you first identify all agency-wide services that directly serve a program and then use a combination of simple cost allocators to allocate the cost of agency-wide services to the program.

Mr. Lazard explained that IDEM currently uses "percentage of revenue" as the cost allocator by which the costs of its agency-wide services are allocated to its various programs and divisions. He said Crowe Chizek has concluded that IDEM lacks the historical information necessary for

the use of this cost allocator, and he offered a number of alternative cost allocators, including these:

- for IDEM human resources services, the number full time employees per fund center;
- for IDEM fiscal management, the total expenditures per program;
- for IDEM information technology, the number of computers or computer applications per program; and
- for the IDEM office of legal counsel, the amount of attorney time expended per major policy initiative or case.

Crowe Chizek's recommendation, Mr. Lazard said, will be that IDEM should expend the time and effort necessary to use simple allocators such as these in allocating to IDEM's divisions the costs of providing its agency-wide services.

Ginny Mahoney, a member of the EQSC, reported on the subgroup she had headed, which studied the voluntary site cleanup statutes and brownfield program statutes of other states. Ms. Mahoney distributed copies of a written "Report to the Environmental Quality Services Council" and summarized this report in her comments. **[At the direction of Senator Gard, Ms. Mahoney's Report is attached to this Final Report as Appendix 5.]**

Ms. Mahoney made the following points:

- Her group met "... to address the potential need for a legislative initiative in an effort to preserve the Brownfields/Voluntary Remediation Program(s) given the perceived potential negative effect of the currently developing policy on risk based cleanups entitled ... RISC."
- The group met once on November 9, 1999. Because those attending this meeting did not vote on whether to endorse any of the suggestions contained in Ms. Mahoney's report, the inclusion of the attendees' names in the report should not be interpreted as a sign that they support those suggestions.
- The Indiana Brownfields Program is not a cleanup program. However, by reference it employs cleanup criteria from the Indiana Voluntary Remediation Program (VRP). Therefore, there is concern about the as-yet-unknown but potentially negative impact of IDEM's Risk Integrated System of Closure (RISC) guidance document on the Indiana Brownfields Program.
- A consultant familiar with both RISC and VRP recently conducted a side-by-side comparison of the default look-up tables of RISC and VRP and concluded that the "Final" RISC/Tier 1 cleanup standards are generally more stringent than the final Tier II cleanup goals under VRP.
- Members of the subgroup agree that it is important to support the Brownfields Program and that careful and continued evaluation of RISC -- and its ability to be used as a part of the Brownfields Program -- is necessary.
- It is important for RISC to be flexible enough to address cleanups under both the Brownfields Program and other regulatory programs; however, the current version of the

RISC guidance document may be problematic with respect to this needed flexibility.

In response to Senator Gard's invitation, **IDEM Commissioner Lori Kaplan** presented comments on the draft final report. Commissioner Kaplan distributed copies of a Memorandum on this subject and summarized the memo in her comments.

[At the direction of Senator Gard, Commissioner Kaplan's Memorandum is attached to this Final Report as Appendix 6.] Commissioner Kaplan made the following points:

- IDEM generally supports the draft final report as a whole.
- Regarding the recommendations that a pilot health information database should be established and that the Cancer Registry should be expanded through increased state funding: the matter of funding these recommendations merits further examination.
- Regarding the recommendation that a state GIS coordinating committee should be created: A State Geographic Information System Committee currently exists and information about the existing Committee should be sought prior to legislative action.
- Regarding the recommendation that the law prohibiting the sale of tobacco to minors should be strengthened: IDEM does not endorse or reject this recommendation.
- Regarding the recommendation concerning the RISC guidance document: The "grandfathering" of remediation projects during the initial transition period should be according to case-by-case decisions based on the specifics of each situation.
- Regarding the water quality-related recommendation concerning antidegradation, sediment, and biological criteria: IDEM recommends that the Water Quality Advisory Group should complete its discussions before specific recommendations are made on this subject.
- Regarding the recommendation that the Governor should appoint a new water quality data task force: In place of the creation of a new group, the scope of an existing IDEM workgroup should be expanded to include water quality data issues.
- IDEM recommends that the EQSC's IDEM Administrative Issues Subcommittee should complete its work regarding the allocation of the costs of services supported by IDEM dedicated funds by the end of March 2000 in order to enable IDEM to prepare for the upcoming budget year.

Public comment was also accepted at the meeting.

V. COMMITTEE ACTIONS AND RECOMMENDATIONS

The EQSC took the following actions and made the following recommendations:

(1) Recommendation: The EQSC should, in the year 2000, study the effects of failing septic systems on public health, perhaps through a subcommittee.

NOTE: The following recommendations (2) through (5) of the EQSC are based on the

four recommendations submitted by the IDEM and Public Health Subcommittee, which became recommendations of the entire EQSC through the EQSC's acceptance of the IDEM and Public Health Subcommittee's Report. **[The Report of the IDEM and Public Health Subcommittee is attached to this Final Report as Appendix 1.]**

(2) Recommendation: ESTABLISH A PILOT DATABASE PROGRAM.

The Program should be established by the Indiana State Department of Health (ISDOH) through the following steps:

A. Select a limited number of geographic locations within Indiana as the subject of the Pilot Database. Choose locations that:

- have diverse populations representing a broad spectrum of Indiana residents; and
- have local health departments of adequate size and resources to assist in the Pilot Program.

Marion County and Lake County are specifically identified as appropriate geographic locations. IDEM and ISDOH should select other appropriate geographic locations.

B. Assemble existing health information for the subject geographic locations and load them into the Pilot Database. The following types of existing health information should be considered:

- Cancer Registry: Physicians are already required to report the information to ISDOH but the reporting is not kept up to date, especially in the counties bordering other states, where services may be provided in another state. ISDOH will need to push reporting more significantly.
- Mortality Information: Death certificates include a significant amount of information that will be helpful. ISDOH already receives this information and periodically publishes it.
- Lead Screening Information: ISDOH already gathers and processes this information.
- Medicaid Information: Through Hoosier Healthwise, information gathered from reimbursement claims can provide an excellent foundation, especially for communities that may be at significant risk from environmental threats. More children will receive coverage through the Children's Health Insurance Program, thus improving the scope of the information.
- State Health Plans: The State of Indiana has the authority to request health information from the various health plans that it provides to state employees. This information would provide a good cross-section of Indiana population (while admittedly biased toward Indianapolis) that would complement the Medicaid data.
- Hospital Discharge Data: The Indiana Hospital Association collects information on hospital discharges and outpatient treatment from hospitals throughout Indiana. The association submits this information to ISDOH.
- Census Data: The census program collects information from citizens regarding

their health. This information could provide an excellent backdrop for comparison.

C. In designing the Pilot Database, focus on:

- children as the population segment of special interest; and
- diseases affecting children -- such as asthma, cancer, and elevated blood lead levels -- that are thought to be linked to environmental contamination.

D. Analyze the Information in the Pilot Database to:

- recognize environmental insults affecting public health in Indiana;
- identify statewide disease trends that exceed national averages;
- identify local disease trends within the subject areas that exceed statewide averages; and
- identify gaps in the information provided currently by the other Indiana health information databases.

Two years should be allowed for the creation of the Pilot Database Project. At the end of two years, the ISDOH should report on the status and results of the Project.

(3) Recommendation: IMPROVE INDIANA'S EXISTING HEALTH INFORMATION DATABASES.

The following steps should be taken to improve health information databases in Indiana:

A. Expand the Indiana Cancer Registry. Rebuild the Cancer Registry by funding it with state funds in the amount of \$2 million per year for two years and then maintain it with state funding of \$1 million per year. This state funding would supplement federal funds. Use the advice of the Centers for Disease Control about the appropriate staffing and priorities in order to make the Cancer Registry into the equivalent of its counterparts in states of similar size. Ensure that the staff includes people to manage data, analyze data, assist in the field with the quality of reported data, assist users, and prepare reports for public health professionals. At the end of two years the ISDOH should report to the EQSC on the status of the Cancer Registry.

B. Expand the Indiana Birth Record Malformation Report. Require the reporting of malformations identified at ages up to four years old. This would require a change in state law to mandate that health professionals report defects discovered in the early years. It would also require an increase in state funding and additional staff, which should be provided permanently.

C. Create a statutory standing commission to coordinate interagency strategies for addressing disease clusters. This commission would deal with the coordination of information exchange between IDEM and ISDOH. It would also remedy a current problem with the effectiveness of the ISDOH/County Health Department system in dealing with diseases *other than* the highly

communicable and infectious diseases. The commission would encourage research into excluding and implicating potential causes and effects of important diseases.

D. Create a State GIS Coordinating Committee. This Committee should be created by the General Assembly to better coordinate the many state data databases that could be compared on single GIS displays.

(4) Recommendation: REPLACE FAILING SEPTIC SYSTEMS WITH CONNECTIONS TO CITY SEWER SYSTEMS

Legislation should be enacted to do the following:

- (1) If necessary, amend IC 13-18-13-3 to authorize the use of money from the Wastewater Revolving Loan Program to pay for the extension of sewer systems to replace failing septic systems.
- (2) Supplement the current revolving loan fund to provide funds to pay for extension of sewer systems to replace failing septic systems.

(5) Recommendation: STRENGTHEN THE LAW PROHIBITING THE SALE OF TOBACCO TO MINORS.

- (1) Encourage enhanced enforcement of the law prohibiting the sale of tobacco to minors.
- (2) Enact a bill amending IC 31-37-2 to provide that a person who provides cigarettes to a minor commits the offense of contributing to delinquency under IC 35-46-1-8.

(6) Action: The EQSC accepted the report of the Air Subcommittee. Senator Gard stated that the EQSC, in taking this action, was voting only to accept the Subcommittee Report and was not voting to endorse any of the various recommendations contained in the Report. **Because the Air Subcommittee did not vote on whether to endorse any of the recommendations in the Report, the inclusion of a recommendation in the Report should not be interpreted as a sign that the Subcommittee or the EQSC endorses the recommendation. The Report is a compilation of recommendations submitted to the Subcommittee. [The Report of the Air Subcommittee is attached to this Final Report as Appendix 2.]**

(7) Action: The EQSC accepted the report of the Land and Water Subcommittee. This report contained some recommendations which had been endorsed by the Subcommittee. It also contained other recommendations which were not endorsed by the Subcommittee but were included in the report for informational purposes. **[The Report of the Land and Water Subcommittee is attached to this Final Report as Appendix 3.]** The recommendations contained in the report which were endorsed by the Subcommittee are as follows:

1. With respect to the FIRST OF THE SUBCOMMITTEE'S ISSUES, the TRANSITION PERIOD APPLYING TO THE RISC GUIDANCE DOCUMENT [HEA 1919], the

Subcommittee voted to endorse the following recommendations:

Length of Transition Period. We recommend a longer transition period than the six-month period that is proposed. We suggest that a one-year to two-year transition period should be used, as such a period would provide for these contingencies more adequately than a six-month period.

Consistent environmental standards should apply throughout an environmental project. IDEM's policy should clearly state that if "existing" guidance is chosen during the transition period, "existing" guidance will apply to that project during and after the transition period, and until the end of the project.

Eligibility for "existing" guidance option. The option to choose "existing" guidance rather than RISC guidance during the transition period should be available if a party has:

- (1) begun a project (including preparing a proposal for environmental investigation and/or remediation); and
- (2) relied on "existing" guidance in doing so, to the point that applying new standards to the project would be unfair.

2. With respect to the THIRD OF THE SUBCOMMITTEE'S ISSUES, i.e., CONTINUE TO LOOK AT WATER-RELATED ISSUES, the Land and Water Subcommittee voted to endorse the following recommendations:

A. Regarding the designation of Outstanding State Resource Waters (OSRW):

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this OSRW dilemma and, because this is a key public policy issue, favors legislative action supporting such a concept.

B. Regarding Wet Weather Permits:

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this dilemma which is supported by the regulated community, the environmental advocate community, and the technical community and, because this is a key public policy issue, favors legislative action supporting such a concept.

C. Regarding Antidegradation of nonBCCs, sediment quality as a water quality standard, and biological integrity as a water quality standard:

The Subcommittee recommends the same policy on antidegradation, sediment quality and biological integrity it did from the 1998 EQSC surface water policy deliberation. This is because IDEM continues to include these three concepts in the ongoing triennial

rulemaking before the Water Pollution Control Board, despite the caution raised by the EQSC last year and in S.B. 343. Each of these issues has federal rulemaking underway to determine the federal government policy. The Subcommittee understands that the Commissioner's Water Quality Advisory Group is planning to consider these issues in the coming months.

(a) antidegradation procedures for nonBCCs

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends that IDEM not proceed with rulemaking on antidegradation procedures for nonBCCs.

(b) sediment quality as Indiana water quality standard

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends the Water Board not promulgate sediment quality as a water quality standard at this time but that it encourage IDEM to incorporate both into permits and into IDEM water monitoring greater studies of sediment quality. Upon finding impaired sediments, IDEM should then determine the cause or require the discharger to determine the cause and prevent further contamination.

(c) biological integrity as Indiana water quality standard

The Subcommittee supports and encourages the use of biological integrity as a tool for IDEM to monitor the quality of Indiana waters and, when justified, to include requirements for studies in permits. Pending the deliberations and advice of the Water Quality Advisory Group, the Subcommittee opposes the inclusion of biological integrity itself as an Indiana water quality standard until the U.S. EPA has clarified what is meant in a manner that permits all parties to understand the quality expectation in the same way.

D. Regarding Indiana Surface Water Quality Data Collection:

The Subcommittee recommends that the Governor appoint a Water Quality Data Task Force to assess the physical, chemical, and biological data water resource at IDEM, the quality assurance protocols, the needs for improved data quality, and the options for obtaining and maintaining an adequate data base for standard-setting (e.g. site-specific metal toxicity, site-specific BAF and site-specific use attainability) and for addressing impairment. The task force shall include representatives from academia (including biological, chemical and hydrological), IDEM, IDNR, USGS, private chemical laboratory, business, agriculture, environmental advocate, municipality, general citizen, Water Board member and four legislators.

E. Regarding the Designation of Outstanding Resource Waters:

The Indiana Code should be amended to include the following provision, or its equivalent: "There is a presumption that the Water Pollution Control Board cannot adopt a rule to designate a waterbody as an outstanding state resource water (OSRW) or an outstanding natural resource water (ONRW) unless it is demonstrated that the waterbody has outstanding water quality, as determined by recognized biological scoring models and criteria. To overcome this presumptive requirement of outstanding water quality, it must be demonstrated that the waterbody possesses truly unique or special features. In addition, before any waterbody can be designated OSRW or ONRW, the Board must also evaluate the economic impact of the designation and the degree of existing urban and agricultural development."

Moreover, before it disbands, the Water Quality Advisory Group should consider the issue of the designation of bodies of water as OSRWs or ONRWs.

(8) Recommendation: the EQSC decided to recommend that the legislators who are working on the HAZARDOUS WASTE MANIFEST ISSUE [HEA 1578] (i.e., the SECOND of the Land and Water Subcommittee's Issues) should continue to work with interested parties and IDEM to come up with a solution that will:

- (1) satisfy the informational needs that are not met by the current requirement;
- (2) address IDEM's funding needs as well; and
- (3) not put an undue burden on those who are filing the reports and/or filing copies of manifests with IDEM.

(9) Recommendation: The EQSC decided to recommend that:

- (1) the existence of the IDEM Administrative Issues Subcommittee should continue to the interim period of the year 2000; and
- (2) the IDEM Administrative Issues Subcommittee should conclude its study of the allocation of costs of services supported by certain IDEM dedicated funds [HEA 1578] in time to accommodate IDEM's budget-related deadlines.

(10) Recommendation: At the final EQSC meeting on December 7, the EQSC adopted the following recommendation, which was a product of the IDEM and Public Health Subcommittee meeting of November 4:

The EQSC recommends amending the Indiana Code to extend the period of time over which a homeowner may pay, in installments, the special assessment imposed by the municipality against the homeowner's home to pay the principal and interest on bonds issued by the municipality under the Barrett Law to finance the extension of municipal sewers.

WITNESS LIST

EQSC GENERAL MEETINGS

Meeting 1: June 29, 1999

Lori Kaplan, Commissioner, Indiana Department of Environmental Management (IDEM)
Janet McCabe, Deputy Commissioner for Air Management, IDEM
Bernie Paul, Eli Lilly and Co.

Meeting 2: August 10, 1999

Lori Kaplan, Commissioner, IDEM
Dana Reed Wise, IDEM
Tom Fidler, Chief, Land Recycling and Cleanup Program, Commonwealth of Pennsylvania Department of Environmental Protection
Craig Robertson, Chairman, Cleanup Standards Scientific Advisory Board, Pennsylvania Land Recycling Program

Meeting 3: September 9, 1999

Lori Kaplan, Commissioner, IDEM
Tim Method, Deputy Commissioner, IDEM
Felicia George, IDEM Assistant Commissioner for the Office of Enforcement
Stan Pinegar, Executive Director, Indiana Petroleum Council
Mike Pitts, Indiana Petroleum Marketers and Convenience Store association
Jim Mahern, IDEM Assistant Commissioner, Office of Pollution Prevention and Technical Assistance
Bruce Palin, Deputy-Commissioner elect for IDEM's new office of Land Quality
Mark Davis, Executive Director, Indiana Association of Solid Waste Districts
Lynn Waters, EQSC Member
Nelson Becker, National Solid Waste Management Association
Glenn Pratt

Meeting 4: October 21, 1999

Lori Kaplan, Commissioner, IDEM
Tim Method, Deputy Commissioner, IDEM
John Fekete, Chairman, IDEM Water Quality Advisory Group
Greta J. Hawvermale, Program Manager, Indiana Development Finance Authority
Dana Reed Wise, IDEM Brownfields Program, Section Chief
Courtney Tobin, Executive Director and General Counsel, Indiana Development Finance Authority
Robert W. Lazard, Crowe Chizek and Company, LLP
Scott R. Nickerson, Crowe Chizek and Company, LLP

Meeting 5: November 23, 1999

Lori Kaplan, Commissioner, IDEM
David Parry, IDEM
Jeff Zickgraf, IDEM

Meeting 6: December 7, 1999

Lori Kaplan, Commissioner, IDEM
Robert W. Lazard, CPA, Crowe Chizek and Company, LLP
Scott R. Nickerson, Crowe Chizek and Company, LLP
Ginny Mahoney

EQSC AIR SUBCOMMITTEE

Meeting 1: August 2, 1999

Janet McCabe, Deputy Commissioner for Air Management, IDEM
Anthony Reinhart, Ford Motor Company

Meeting 2: August 24, 1999

No testimony from witnesses.

Discussion moderated by Janet McCabe, Deputy Commissioner for Air Management, IDEM

Meeting 3: September 2, 1999

Janet McCabe, Deputy Commissioner for Air Management, IDEM
Kurt W. Anderson, President, Monaco Coach Corporation
Bill Beranek, President, Indiana Environmental Institute
Terry M. Hogan, Indianapolis Power and Light
Tom Anderson, Save The Dunes Council
Andy Knott, Hoosier Environmental Council Action Fund
Tom Easterly, Bethlehem Steel Corporation

Meeting 4: September 22, 1999

Louis Jager, Air Quality Division, Michigan Department of Environmental Quality
Don Sutton, Illinois Environmental Protection Agency
Moderator: Tim Method, Deputy Commissioner, IDEM

Meeting 5: September 29, 1999

No testimony from witnesses.

Meeting 6: November 8, 1999

Janet McCabe, Deputy Commissioner for Air Management, IDEM
Cindy Lee, Air Pollution Control District of Jefferson County, Kentucky

EQSC IDEM AND PUBLIC HEALTH SUBCOMMITTEE

Meeting 1: August 5, 1999

Dr. Richard Feldman, Commissioner of the Indiana Department of Health
Howard Cundiff, Consumer Protection Division, Indiana Department of Health
Representative Charlie Brown
Tim Method, Deputy Commissioner, IDEM
LaKenya Johnson, IDEM
Tom Neltner, Improving Kids Environment
May Maulsby, Indianapolis Urban League

Meeting 2: October 13, 1999

Sally Swanson: Northwest Indiana Team Manager United States Environmental Protection Agency (U.S. EPA)
Region 5
Amy Mucha, Environmental Health Services, U.S. EPA
Mark Johnson, Toxicologist, U.S.EPA
Clayton Cower: Center for Toxic Substances and Disease Registry
Maryann Suero, Ph.D., Chicago Cumulative Risk Initiative, U.S.EPA
Ed Lutz, GIS Coordinator, Indiana Department of Health

Meeting 3: November 4, 1999

No testimony from witnesses.

EQSC IDEM AND ADMINISTRATIVE ISSUES SUBCOMMITTEE

Meeting 1: August 4, 1999

Jeff Underwood, IDEM Controller

Tim Method, Deputy Commissioner, IDEM

EQSC LAND AND WATER SUBCOMMITTEE

Meeting 1: July 29, 1999

Bruce Palin, Deputy-Commissioner elect for IDEM's new office of Land Quality

Kari Simonelic, Acting Director of IDEM's Water Section

Meeting 2: September 3, 1999

Bruce Palin, Deputy-Commissioner elect for IDEM's new office of Land Quality

Meeting 3: October 14, 1999

Matt Rueff, Assistant Commissioner, IDEM

Bill Beranek, Ph.D., Indiana Environmental Institute

Scott Schutte, City of Indianapolis

Jim Meyer, attorney, City of Gary

Art Umble, City of Elkhart

Cynthia L. Wagner, IDEM Office of Water Management

Jan Henley, IDEM Office of Water Management

Meeting 4: November 19, 1999

No testimony from witnesses.



Legislative Members

Sen. Vi Simpson, Chairperson
Sen. Beverly Gard
Rep. Dale Sturtz
Rep. David Wolkins

Lay Members

Michael Carnahan
Kerry Michael Manders
Alice Schloss

Advisory Members

Julie Newland
John Blair
Doug Pond
~~Ed Stalter~~

Craig Mortell, Attorney for the Council
Bernadette Bartlett, Fiscal Analyst for the Council
Jeff Miller, Council Intern

Authority: P.L. 248-1996 (SEA 138); EQSC
Minutes, June 29, 1999

APPENDIX 1

IDEM AND PUBLIC HEALTH SUBCOMMITTEE

RECOMMENDATIONS OF THE IDEM AND PUBLIC HEALTH SUBCOMMITTEE TO THE ENVIRONMENTAL QUALITY SERVICE COUNCIL AS PRESENTED ON NOVEMBER 23, 1999

RECOMMENDATION #1 TO THE EQSC: ESTABLISH A PILOT DATABASE PROGRAM

[Please Note: The official name of the Subcommittee is "the IDEM and Public Health Subcommittee." The inclusion of "IDEM" in the Subcommittee's name should not be interpreted as an indication that the Indiana Department of Environmental Management concurs in the Subcommittee's recommendations.]

The IDEM and Public Health Subcommittee recommends to the EQSC the establishment of a Pilot Database Program. The Program should be established by the Indiana State Department of Health (ISDOH) through the following steps:

A. Select a limited number of geographic locations within Indiana as the subject of the Pilot Database. Choose locations that:

- have diverse populations representing a broad spectrum of Indiana residents; and
- have local health departments of adequate size and resources to assist in the Pilot Program.

Marion County and Lake County are specifically identified as appropriate geographic locations. IDEM and ISDOH should select other appropriate geographic locations.

B. Assemble existing health information for the subject geographic locations and load them into the Pilot Database. The following types of existing health information should be considered:

- Cancer Registry: Physicians are already required to report the information to ISDOH but the

reporting is not kept up to date, especially in the counties bordering other states, where services may be provided in another state. ISDOH will need to push reporting more significantly.

- **Mortality Information:** Death certificates include a significant amount of information that will be helpful. ISDOH already receives this information and periodically publishes it.
- **Lead Screening Information:** ISDOH already gathers and processes this information.
- **Medicaid Information:** Through Hoosier Healthwise, information gathered from reimbursement claims can provide an excellent foundation, especially for communities that may be at significant risk from environmental threats. More children will receive coverage through the Children's Health Insurance Program, thus improving the scope of the information.
- **State Health Plans:** The State of Indiana has the authority to request health information from the various health plans that it provides to state employees. This information would provide a good cross-section of Indiana population (while admittedly biased toward Indianapolis) that would complement the Medicaid data.
- **Hospital Discharge Data:** The Indiana Hospital Association collects information on hospital discharges and outpatient treatment from hospitals throughout Indiana. The association submits this information to ISDOH.
- **Census Data:** The census program collects information from citizens regarding their health. This information could provide an excellent backdrop for comparison.

C. In designing the Pilot Database, focus on:

- children as the population segment of special interest; and
- diseases affecting children -- such as asthma, cancer, and elevated blood lead levels -- that are thought to be linked to environmental contamination.

D. Analyze the Information in the Pilot Database to:

- recognize environmental insults affecting public health in Indiana;
- identify statewide disease trends that exceed national averages;
- identify local disease trends within the subject areas that exceed statewide averages; and
- identify gaps in the information provided currently by the other Indiana health information databases.

Two years should be allowed for the creation Pilot Database Project. At the end of two years, the ISDOH should report on the status and results of the Project.

RECOMMENDATION #2 TO THE EQSC: IMPROVE INDIANA'S EXISTING HEALTH INFORMATION DATABASES

The IDEM and Public Health Subcommittee recommends to the EQSC that the following steps be taken to improve health information databases in Indiana:

A. **Expand the Indiana Cancer Registry.** Rebuild the Cancer Registry by funding it with state funds in the amount of \$2 million per year for two years and then maintain it with state funding of \$1 million per year. This state funding would supplement federal funds. Use the advice of the Centers for Disease Control about the appropriate staffing and priorities in order to make the Cancer Registry into the

equivalent of its counterparts in states of similar size. Ensure that the staff includes people to manage data, analyze data, assist in the field with the quality of reported data, assist users, and prepare reports for public health professionals. At the end of two years, the ISDOH should report to the EQSC on the status of the Cancer Registry.

B. Expand the Indiana Birth Record Malformation Report. Require the reporting of malformations identified at ages up to four years old. This would require a change in state law to mandate that health professionals report defects discovered in the early years. It would also require an increase in state funding and additional staff, which should be provided permanently.

C. Create a statutory standing commission to coordinate interagency strategies for addressing disease clusters. This commission would deal with the coordination of information exchange between IDEM and ISDOH. It would also remedy a current problem with the effectiveness of the ISDH/County Health Department system in dealing with diseases *other than* the highly communicable and infectious diseases. The commission would encourage research into excluding and implicating potential causes and effects of important diseases.

D. Create a State GIS Coordinating Committee. This Committee should be created by the General Assembly to better coordinate the many state data databases that could be compared on single GIS displays.

RECOMMENDATION #3 TO THE EQSC: REPLACING FAILING SEPTIC SYSTEMS WITH CONNECTIONS TO CITY SEWER SYSTEMS

The IDEM and Public Health Subcommittee recommends to the EQSC the passage of legislation to do the following:

- (1) If necessary, amend IC 13-18-13-3 to authorize the use of money from the Wastewater Revolving Loan Program to pay for the extension of sewer systems to replace failing septic systems.
- (2) "Supplement" the current revolving loan fund to provide funds to pay for extension of sewer systems to replace failing septic systems.

RECOMMENDATION #4 TO THE EQSC: STRENGTHEN THE LAW PROHIBITING THE SALE OF TOBACCO TO MINORS.

The IDEM and Public Health Subcommittee recommends to the EQSC the following:

- (1) Encourage enhanced enforcement of the law prohibiting the sale of tobacco to minors.
- (2) Enact a bill amending IC 31-37-2 to provide that a person who provides cigarettes to a minor commits the offense of contributing to delinquency under IC 35-46-1-8.

Members

Sen. Kent Adams, Chairperson
Sen. Glenn Howard
Rep. Richard Mangus
Rep. Dale Sturtz
Marvin Gobles
David Rector
Gary Redding
Tom Anderson
Travis Worl
Cheryl Devol-Glowinski
Dick Van Frank
John Fekete
John Stafford
Darryl Dasher
Andy Knott
Tony Sullivan
Shirley Welker
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Tom Easterly
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LSA Staff:

Craig Mortell, Attorney for the Council
Bernadette Bartlett, Fiscal Analyst for the Council
Jeff Miller, Council Intern

Authority: P.L. 248-1996 (SEA 138); EQSC
Minutes, June 29, 1999



APPENDIX 2

AIR SUBCOMMITTEE

REPORT OF THE AIR SUBCOMMITTEE TO THE ENVIRONMENTAL QUALITY SERVICE COUNCIL AS PRESENTED ON NOVEMBER 23, 1999

The Air Subcommittee of the Environmental Quality Service Council was assigned four issues for study during the 1999 interim period. Senator Kent Adams, the Chairman of the Subcommittee, invited the members of the Subcommittee to submit written recommendations as to each of the issues. Staff prepared a written compilation of the members' recommendations, and the compilation was discussed at the Subcommittee meeting of September 29. Staff then prepared this report.

NOTE: Because the Subcommittee did not vote on whether to endorse any of these recommendations, the inclusion of a recommendation in this report should not be interpreted as a sign that the Subcommittee -- or a majority of the Subcommittee's members -- supports the recommendation. However, in presenting the recommendations pertaining to each issue, this report generally places at the top of the list those that appeared most frequently in the written submissions of the members.

The recommendations presented in this report were submitted by the members of the Subcommittee. In some cases, a single recommendation presented in this report represents two or more corresponding recommendations submitted by different members; in these cases, an effort has been made to state the single recommendation in language that fairly reflects the meaning of all of the corresponding recommendations. Where the heading "*Particular Comments:*" appears in this report, two or more recommendations are set forth in the wording (though abbreviated) in which the Subcommittee members submitted them.

At the meeting of September 29 an officer of Department of Environmental Management (IDEM) made comments summarizing the general thrust of the recommendations relating to three of the Subcommittee's issues. Those comments are noted in this report under the heading "*IDEM:*".

ISSUE (1): THE AIR EMISSIONS REDUCTION CREDIT PROGRAM

SOURCE OF THE ISSUE (HEA 1561): (a) *The EQSC shall conduct a study to advise IDEM concerning the*

feasibility of establishing **an air emissions reduction credit program** that provides economic incentives to achieve air quality goals and objectives in Indiana.

(b) The EQSC shall consider the following items in its study:

- (1) Cost effective ways to achieve air emissions reductions.
- (2) The economic and environmental benefits of an air emissions reduction credit program that would allow credits to be earned, banked, and traded on an exchange.
- (3) The benefits of an air emissions reduction credit trading program in:
 - (A) areas classified as nonattainment for ozone;
 - (B) areas classified as transitional for ozone attainment; and
 - (C) areas unclassified under the federal Clean Air Act (42 U.S.C. 7401 et seq.).
- (4) The establishment of a formal process for the identification of emission offsets for use in nonattainment areas.
- (5) Existing federal and state air emissions reduction credit programs.
- (6) Use of set-asides to achieve net reduction of air emissions and maximum environmental benefit.
- (7) The establishment of a central registry or clearinghouse where air emissions reduction credit program information may be published.
- (8) Existing federal regulations that might affect a state operated air emissions reduction credit program.
- (9) Guidelines determining use and value of an earned air emissions reduction credit.
- (10) Locally transported pollutants and long range transported pollutants.
- (11) The benefits of inter-pollutant trading.
- (12) The duration of an earned air emissions reduction credit.
- (13) Any other information the EQSC considers appropriate.

(c) **Before January 1, 2000**, the EQSC shall make a recommendation to the legislative council that does at least one (1) of the following:

- (1) Suggests legislation that would require the air pollution control board to adopt rules to establish an air emissions reduction credit program before July 1, 2001.
- (2) Advises IDEM to adopt guidance or nonrule policy documents before July 1, 2001, to implement air emissions reduction credit trading or other economic incentives to meet air quality goals and objectives.
- (3) Recommends that the EQSC or a workgroup established by the EQSC should continue to study the feasibility of establishing an air emissions reduction credit program in Indiana.

RECOMMENDATIONS:

(1) Progress toward the establishment of an air emissions reduction credit program should continue.

(2) The work of establishing the program should be done within the current Trading Workgroup or in a similar workgroup forum.

Particular Comments: Indiana, through a workgroup forum, should pursue the development of a trading system; the meetings facilitated recently by IDEM should continue.

(3) The program should avoid disproportional impacts on low-income urban communities.

(4) As to the design and scope of the air emissions reduction credit program, there are widely diverging viewpoints. *Particular Comments:*

Establish a free trade system like the Michigan system rather than a cap and trade system. Make it as broad as possible. Encourage maximum use and full participation of all potential sources ...

- versus -

The emission credit program established in Indiana should be only a limited pilot program of NOx credit trading, administered by IDEM.

(The program should be) on the Michigan model with broad trading features, including inter-sector and inter-pollutant trading.

- versus -

The air emissions trading program should be limited to Northwest Indiana and should be conducted as a pilot project. The program should avoid inter-pollutant trading.

Allow ... the banking of emission reduction credits to offset environmental penalties issued by IDEM ... [AND] Following the transfer of a banked emission to a facility, the emission credit should be useable for the life of the source or until applicable rule change.

- versus -

The banking of credits should be allowed only over the short term and the value of credits should depreciate over that time.

The program should (involve) nitrogen oxides, particulate matter, VOCs, SO₂ and CO.

- versus -

The program should (be limited to) the trading of VOC emissions in non-attainment areas for NO_x emissions.

IDEM: There are certain “commonalities” in the Subcommittee’s recommendations on the air emissions reduction credit trading program issue: to look at a Michigan-type program; to look at a cap and trade program for northwest Indiana; to look at a trading program; and the work group format is a good one.

ISSUE (2): SUBMISSION OF THE NON-RULE POLICY DOCUMENT ON STYRENE EMISSIONS TO EQSC FOR REVIEW AND COMMENT

SOURCE OF THE ISSUE (HEA 1919): *(a) As used in this SECTION, "existing source" means a source in the reinforced plastic composites fabricating industry that:*

(1) emits styrene; and

(2) has been issued a construction permit or an operating permit by IDEM.

(b) IDEM shall do the following:

(1) Before October 1, 1999, develop written policies and procedures to address changes in estimated air pollution emissions from existing sources.

*(2) Before publication under subdivision (3), **make a proposed non-rule policy document** available to the following **for review and comment**:*

(A) The public.

(B) The air pollution control board.

*(C) **The EQSC.***

(D) The clean manufacturing technology institute.

(3) Not later than November 1, 1999, publish a non-rule policy document describing the policies and procedures that the department will use to make determinations on air construction and operating permits for existing sources.

(c) Before December 31, 2000, the air pollution control board shall adopt rules to establish appropriate standards for control of air pollution from new and existing sources in the reinforced plastic composites fabricating industry. The air pollution control board shall consider all available information when adopting the rules, including the following:

(1) Available control technology.

(2) Industry work practices.

(3) Materials available to the industry.

(4) Recommendations by the clean manufacturing technology institute.

(d) This SECTION expires July 1, 2001.

RECOMMENDATIONS:

(1) The process called for in HEA 1919 (the preparation of a non-rule policy document, the submission of that document for review and comment, and rulemaking) should go forward.

(2) The draft non-rule policy document on styrene emissions that IDEM presented to the EQSC Air Subcommittee on September 2 is satisfactory.

(3) There should be no increase in the stringency of a company's emission limitations – due to the correction of the emission factors applying to the reinforced plastic composites fabricating industry – before the expiration of the company's Title V permit.

(4) Opinions about non-rule policy documents in general: (A) All current and future non-rule policies should be reviewed by the EQSC for adherence to state and federal rules. (B) Non-rule policy documents are meaningless; rulemaking should be used instead so that all parties have equitable input and the department's action is enforceable.

IDEM: There are a lot of commonalities in the Subcommittee's recommendations on this subject. There seems to be a majority view that our approach makes sense for the interim. There is an affirmation that IDEM should go ahead with the process. The process is at the rulemaking stage now, the second step. However, there are a few comments in the Subcommittee's recommendations from some who view things differently.

ISSUE (3): GROUND LEVEL OZONE FORMATION

SOURCE OF THE ISSUE (HR 110 and 80): *SECTION 1. The EQSC shall undertake the task of **determining**, for Indiana, the **framework** for the best national, state and regional **strategy for controlling ground level ozone formation**. In developing the framework, the EQSC shall:*

Define the extent of the problem for Indiana;

Identify characteristics of ozone formation;

Identify sources of chemicals that contribute to ozone formation;

Identify the impact of those sources;

Identify the state of information regarding the information and transportation of ozone and the effect of various controls on its formation;

Examine the assumptions that underlie current federal and state control strategies;

Consider the relative merits, including the cost-effectiveness, of national, regional, statewide and local controls;

Consider methods of developing certainty that policies and strategies will be reliable for at least 5 years increments; and

Consider timing of implementing potential control measures in light of EPA'S (Environmental Protection Agency) modeling and schedule for submitting state implementation plans for traditional ozone non-attainment areas.

SECTION 2. The EQSC shall make a report of its findings to the Governor, the Speaker of the House and the President Pro Tempore of the Senate along with any legislative recommendations it chooses to make by November 1, 1999.

RECOMMENDATIONS:

(1) Adopt an approach that treats the whole state as one.

Particular Comments: A mechanism should be instituted so that the whole state would be treated as one for purposes of ozone regulation; the Air Subcommittee should recommend that the EQSC strongly endorse the development of a statewide NOx reduction rule, generally consistent with the Governor's 1998 recommendations, as the most effective measure available to improve air quality throughout the state; the entire state should be designated as non-attainment of the new eight hour ozone standard (and) Indiana should implement statewide vehicle emissions testing, including even diesel vehicles; for the eight-hour standard, there is no significant difference in air quality throughout the State and the entire State should be treated the

same.

(2) Take a wait-and-see approach to the eight hour standard.

Particular Comments: EQSC should direct IDEM to separate the one-hour ozone standard from the eight-hour standard while the *American Trucking* litigation is pending; since the federal courts have rendered the eight-hour ozone standard unenforceable and placed an indefinite stay on EPA's NOx SIP, only the minimum resources should be delegated to ozone-related activities at present; EQSC should advise IDEM to let the federal litigation and possible congressional activity play itself out prior to implementing any control measures in potential ozone nonattainment areas.

(3) Work should be done through a new task force or work group or the existing work group.

Particular Comments: The legislature and the governor should create a single task force to look at rational and cost-effective ozone control strategies that can be implemented in Indiana; IDEM should continue to work with its statewide workgroup on development of the rule; the Legislature, through the EQSC, should establish an independent ozone group to work over the next year to determine the geographic extent of the problem, to find viable solutions (local, regional and statewide), and to determine the impacts of controls; EQSC should advise IDEM to continue working with interested parties in compiling the most cost-effective control measures in order to be prepared for some definitive action by the federal government.

(4) Work toward "attainment" designation under the 1 hour standard.

Particular Comments: EQSC should direct IDEM ... to continue work on changing the nonattainment designations to "attainment" for the one-hour standard in areas where the monitoring supports such redesignations; EQSC should recognize the completion of the one hour ozone nonattainment plans for Lake, Porter, Clark and Floyd Counties as a priority; IDEM should work to have the areas where measured air quality meets the one-hour standard designated as "attainment."

(5) The state should discourage urban sprawl.

Particular Comments: Indiana should do more to encourage redevelopment of existing urban areas and discourage development in suburban areas to minimize urban sprawl; EQSC needs to address urban development beyond the regional district perimeters and the economic development within those areas.

(6) Indiana's response to the ozone problem should include the promotion of new technologies.

Particular Comments: IDEM should develop an ozone reduction program that focuses on the most cost-effective methods of reducing ozone levels (rather than focusing only on methods to reduce individual precursors); Indiana should: Promote and deploy energy efficiency measures and renewable energy technologies -- solar, wind, and low-head hydro. Adopt cleaner, distributed sources of power generation such as fuel cell technology and combined-cycle gas turbine technology. Install additional pollution control equipment on all power plants to address NOx. Promote hybrid and fuel cell technology to reduce reliance on internal combustion engine.

(7) Indiana should pursue amending the federal Clean Air Act so that there is no such thing as ozone nonattainment areas, or at least so that ozone nonattainment designations are not made until after the dust settles in the ozone air quality standard litigation.

(8) IDEM should continue to focus on areas with monitors indicating ozone nonattainment and not be tempted to contemplate control measures outside those areas [i.e., the opposite of recommendation (1)].

IDEM: On this issue (ozone) there seems to be a greater difference or gradation of difference among the Subcommittee's recommendations. But it seems that there is a consensus to wait and see how things come out with respect to the eight hour standard. The Subcommittee should make a strong comment that the State should go forward and take the steps necessary to bring nonattainment areas into attainment. And no matter how things come out in relation to the eight hour standard, the state should be able to act quickly.

ISSUE (4): ALTERNATIVE FUELS AND ALTERNATIVE FUEL VEHICLES

SOURCE OF THE ISSUE (HCR 115): *SECTION 1. That the legislative council is urged to direct **the EQSC to study the benefits to air quality associated with alternative fuels and alternative fueled vehicles** as they relate to the reduction of mobile source emissions.*

SECTION 2. That the study, if undertaken, shall be under the direction of the legislative council and that a final report shall be issued as directed by the legislative council.

RECOMMENDATIONS:

(1) The State should encourage the use of alternative fuels and alternative fuel vehicles.

Particular Comments: The EQSC should encourage IDEM to look at possibilities to get additional alternative fuel vehicles on the road; EQSC should use the emission trading program to encourage the use of alternative fuels and alternative fuel vehicles; the use of alternative fueled vehicles should be actively encouraged with economic incentives; EQSC should recommend legislation directing IDEM to give penalty offset credit for the construction and operation of fueling stations for alternative fuels and alternative fuel vehicles; IDEM should consider alternative fuels during the development of ozone attainment plans.

(2) IDEM should provide information about alternative fuels and alternative fuel vehicles.

Particular Comments: EQSC should direct IDEM to provide information and comparisons on alternative sources of emissions; EQSC should direct IDEM to develop a simple chart showing the emissions per unit of travel for all criteria pollutants and ozone precursors for each category of vehicle; IDEM and the Department of Commerce should provide an overview of alternative fuels and available incentives and options used by other states and the federal government; (the state should) distribute information about clean fuels, vehicles, and refueling infrastructure throughout the state.

(3) The use of alternative fuels and alternative fuel vehicles should be studied.

Particular Comments: EQSC should form a committee facilitated by Indiana Department of Commerce to further explore the promotion and use of alternative fuels and alternative fuel vehicles; the state could form a task force ... to explore ways to reduce industry and consumer costs for hybrid and fuel-cell powered automobiles; the Air Subcommittee should hear testimony or convene a forum to hear options for Indiana to encourage the development of the infrastructure necessary to facilitate and encourage the use of alternative fuel vehicles.

(4) The state fuel tax should be waived on all fuels to create a level playing field.

(5) Fuel policies should be set on the federal level due to supply and logistical concerns; states should not be in the business of mandating specific fuels.



Members

Sen. Beverly Gard, Chairperson
Sen. Kent Adams
Sen. Glenn Howard
Rep. Mark Kruzan
David Benshoof
Michael Carnahan
Randy Edgemon
Regina Mahoney
Kerry Michael Manders
Alice Schloss
Lynn Waters
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Clifford E. Duggan, Jr.
Larry Kane
David Bottorf
Mark Palmer
John Kyle
Rae Schnapp
Maggie McShane
Betsy DuSold
Scott Schutte
Glenn Pratt
Mike Frey
Douglas Bley
Lisa McKinney Goldner
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Bartlett, Fiscal Analyst for the Council
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Authority: P.L. 248-1996 (SEA 138); EQSC
Minutes, June 29, 1999

APPENDIX 3

LAND AND WATER SUBCOMMITTEE

REVISED REPORT

DECEMBER 7, 1999

The Land & Water Subcommittee of the Environmental Quality Service Council was assigned three issues for study during the 1999 interim period. Senator Beverly Gard, the Chairman of the Subcommittee, invited the members of the Subcommittee to submit written recommendations as to each of the issues.

The recommendations presented in this report were submitted in response to Senator Gard's invitation. The Subcommittee decided by vote to endorse some of these recommendations. However, recommendations that were not officially endorsed by vote of the Subcommittee are also included in this report. In addition, this revised report includes comments submitted by IDEM Deputy Commissioner Tim Method in response to Senator Gard's invitation to submit views contrary to those endorsed by the Subcommittee.

Recommendations that were endorsed by the Subcommittee are so denoted in bold letters.

MEMBERS' RECOMMENDATIONS

ISSUE I. TRANSITION PERIOD ASSOCIATED WITH RISC (Risk Integrated System of Closure) DOCUMENT.

[HEA 1919, SECTION 22]

Recommendation required before December 1, 1999

MEMBER RECOMMENDATION NUMBER 1.

SOURCE: Tim Method of IDEM

The agency developed a draft Transition Policy for RISC Guidance and solicited comments on the policy from commenters on the RISC Guidance. Three comment letters were received and the policy has been revised to address those comments. Several commenters wanted the 6 month transition period extended to 12 months. The attached draft policy has lengthened the period to nine months, providing for a 3 month notice period before the RISC Guidance transition period would begin.

DRAFT

Risk Integrated System of Closure (RISC) Transition Policy

The Indiana Department of Environmental Management plans to issue the Risk Integrated System of Closure (RISC) Technical Manual and program specific User Guides in early 2000. RISC will establish procedures and standards that may significantly differ from "existing" guidance (see definition below) being utilized by IDEM's various remediation programs. IDEM understands that there may be some confusion as to when "existing" guidance can still be applied once the issuance of the RISC Technical Manual and User Guides takes place. To facilitate a smooth transition from "existing" guidance, IDEM is proposing the following transition policy for each of the remediation programs.

A three (3) month notice will be provided prior to the RISC Guidance becoming effective. A RISC transition period will begin with the issuance of the final RISC technical manual and user guides and end six months later. The purpose of this period is to allow for consistent application, during and after the transition period, of when and where "existing" guidance may be utilized and when the RISC guidance will be utilized.

During the transition period, a responsible party or applicant is given the choice to follow either "existing" or RISC guidance if the following actions occur before or during the transition period:

- RCRA Permitting - a closure plan has been submitted
- RCRA Corrective Action - a facility investigation work plan has been submitted
- Leaking Underground Storage Tank program - a Leaking Underground Storage Tank incident report and Initial Site Characterization (ISC) are received by IDEM. (Note: If the incident report is made with less than 45 days remaining in the transition period, then the transition period will be extended for that site until the due date of the ISC). Extensions may be granted at the discretion of the Leaking Tank program, if a written request is submitted before the ISC deadline.
- State Clean-up Program - An Agreed Order has been signed by all parties.
- Voluntary Remediation Program - a voluntary remediation agreement (VRA) has been approved and signed by IDEM.
- Brownfields Program - the Indiana Development Finance Authority Board's approval of a Brownfields Site Assessment Grant or Brownfields Loan. The issuance of a Brownfields Program letter stating that the site information provided meets the Brownfields Program's Comfort and Site Status Letter non-rule policy requirements. The issuance of a Brownfields Program letter stating that the application is approved for IDEM to conduct a Brownfields Environmental Assessment.

If the above actions have not occurred before or during the transition period, then the responsible party, or applicant, is expected to utilize the RISC Technical Manual and User Guides. Responsible parties that are

utilizing "existing" guidance may choose to change to the RISC guidance at any point in time during or after the transition period. However, at that point the closure is expected to comply with RISC in all respects. Once the decision is made to use the RISC guidance during the transition period, it is expected that the responsible party will not change back to "existing" guidance.

Notwithstanding the provisions of the previous paragraph, after the transition period a responsible party shall complete the implementation of any work plans, closure plans, or other documents approved during or prior to the transition period according to their terms. These documents will not ordinarily be re-opened merely because they reflect "existing" guidance.

Definition of existing guidance:

- RCRA Permitting - OSHWM's July 25, 1997, Hazardous Waste Management Unit Closure Guidance document or the draft RISC document in effect at the time the closure plan was submitted
- RCRA Corrective Action - EPA Superfund Guidance (RAGS)
- State Cleanup - EPA Superfund Guidance (RAGS)
- Leaking Underground Storage Tanks - the October 1994 Underground Storage Tank Branch Guidance Manual
- Voluntary Remediation Program(VRP) - the VRP July 1996 Program Resource Guide

10/29/99

MEMBER RECOMMENDATION NUMBER 2.

SOURCE: Miriam Dant of Baker & Daniels.

NOTE: THIS SET OF RECOMMENDATIONS WAS ENDORSED BY THE LAND AND WATER SUBCOMMITTEE.

Length of Transition Period. The new RISC Guidance will bring about significant changes in the way environmental investigations and cleanups are performed by parties and overseen by IDEM. As IDEM begins to apply the RISC Guidance to actual cleanup projects, it is likely to encounter previously unforeseen issues and difficulties, including problems in interpreting the new guidance and in adequate IDEM staffing and timely review of proposals under the new guidance.

One of the functions of a transition period should be to provide a cushion of time during which parties may choose to follow pre-existing policies while the various problems encountered with the new RISC policy are still being worked out. **For this reason, we would recommend a longer transition period than the six-month period that is proposed. We suggest that a one-year or two-year transition period should be used, as such a period would provide for these contingencies more adequately than a six-month period.** A longer transition period also would tend to lessen the likelihood of an immediate flood of projects being submitted to IDEM upon finalization of the RISC Guidance, to take advantage of a brief transition window. Thus, a longer transition period would allow for a smoother start in the implementation of the RISC Guidance.

Consistent environmental standards should apply throughout an environmental project. To the extent that IDEM's draft RISC Transition Policy would allow "existing" guidance, once chosen during the transition

period, to continue to apply until the end of the project, we support this approach. However, this is not clearly stated in the draft Transition Policy. **IDEM's policy should clearly state that if "existing" guidance is chosen during the transition period, "existing" guidance will apply to that project during and after the transition period, and until the end of the project.**

Eligibility for "existing" guidance option. **The option to choose "existing" guidance rather than RISC guidance during the transition period should be available if a party has (1) begun a project (including preparing a proposal for environmental investigation and/or remediation); and (2) has relied on "existing" guidance in doing so, to the point that applying new standards to the project would be unfair.** A party that meets these criteria during the transition period should not be barred from continuing to use "existing" guidance throughout the project simply because IDEM has not taken a particular action (over which the party has no control), such as signing a Voluntary Remediation Agreement (in the VRP) or approving a remediation work plan (in the State Clean-up Program). IDEM should change these eligibility criteria to provide that the option of using "existing" guidance will be available during the transition period for VRP projects (1) that have been accepted into the VRP; and (2) for which the applicant has requested to use "existing" guidance because initial work on the project (before the expiration of the transition period) has relied on "existing" guidance. Similarly, IDEM should change the applicability requirements for projects in the State Clean-up Program to include all projects for which a remediation work plan, or investigation work plan, has been submitted to IDEM.

The Transition Policy should avoid implying that the RISC Guidance will be imposed as law. In the draft RISC Transition Policy, IDEM states that the RISC Guidance "must be applied" to those projects ineligible for the transition period alternative, and states that, if certain actions have not occurred before expiration of the transition period, the party "must" adhere to the guidance as if it had been promulgated as a rule. We suggest that IDEM change this language in the transition policy in a way that more appropriately reflects the status of the RISC Guidance as a non-rule policy. As we understand the function of such policy, the RISC Guidance will be an expression of what IDEM has determined are acceptable standards and procedures to be used in conducting environmental investigations and cleanups, and that any party deviating from the published guidance, while not prohibited from doing so, will have the burden of convincing IDEM that his actions or proposals are an acceptable alternative.

MEMBER RECOMMENDATION NUMBER 3.

SOURCE: Mark Shere, attorney, on behalf of Doug Bley of Bethlehem Steel

Yesterday, I submitted comments regarding the draft RISC transition policy on behalf of Bethlehem Steel to James Hunt at IDEM. Doug Bley at Bethlehem asked me to forward these comments to you for possible use by the EQSC, and to say that Bethlehem will support the transition policy if it is revised to incorporate these points.

From: Mark E. Shere [mailto:MShere@concentric.net]
 Sent: Wednesday, September 15, 1999 5:46 PM
 To: James M. Hunt (E-mail)
 Cc: Thomas W. Easterly (E-mail); CHMM Douglas P. Bley (E-mail)
 Subject: Comments on Draft RISC Transition Policy

Dear Mr. Hunt:

Thank you for the opportunity to provide input on the draft RISC Transition Policy. I am sending this note on behalf of Bethlehem Steel to say that we found the draft policy to be very clear and reasonable. We have two thoughts for your consideration that might further strengthen the policy.

First, the policy seems to indicate that an approved work plan, remediation plan, or other document should be implemented according to its terms. In other words, these approved documents do not need to be reopened during the transition period or thereafter just because some work remains to be finished. It would be very helpful to Bethlehem Steel if this point could be made more explicit. Bethlehem is currently completing a Phase 1 RCRA

Facility Investigation pursuant to a detailed work plan previously approved by EPA Region 5. The final investigation report will be submitted to EPA at the end of November 1999. EPA's review could easily take six months or more, and some follow-up work may be necessary in response to the agency's comments. Bethlehem requests clarification that its Phase 1 work and reports, which have already cost the company more than \$2 million, will not need to be re-opened.

Second, there seems to be a surface inconsistency in using terms such as "ONLY" and "must" in a non-binding guidance policy. Bethlehem believes that it understands IDEM's intent behind using these terms, and that the agency's objectives are entirely appropriate and reasonable. A short statement confirming the availability of non-default options (consistent with page 1-3 of the RISC technical resource guide) would help to clarify this intent and eliminate any inconsistency.

A REDLINE VERSION OF THE DRAFT POLICY is attached, with minor wording additions to incorporate the above points. I hope you find these thoughts useful.

Sincerely,

Mark Shere

**DRAFT [Redline Version]
Risk Integrated System of Closure (RISC)
RISC Transition Policy**

The Indiana Department of Environmental Management plans to issue the Risk Integrated System of Closure (RISC) Technical Manual and program specific User Guides in early 2000. RISC will establish procedures and standards that may significantly differ from "existing" guidance (see definition below) being utilized by IDEM's various remediation programs. IDEM understands that there may be some confusion as to when "existing" guidance can still be applied once the issuance of the RISC Technical Manual and User Guides takes place. To facilitate a smooth transition from "existing" guidance, IDEM is proposing the following transition policy for each of the remediation programs.

A RISC transition period will begin with the issuance of the final RISC technical manual and user guides and end six months later. The purpose of this period is to allow for consistent application of **when and where "existing" guidance may be utilized** and when the RISC guidance **must be applied** during the transition period and thereafter.

During the transition period, a responsible party or applicant is given the choice to follow either "existing" or RISC guidance ONLY if the following actions occur before or during the transition period:

- RCRA permitting - a closure plan has been submitted
- RCRA Corrective Action - a facility investigation work plan has been submitted
- Leaking Underground Storage Tank program - an Initial Site Characterization (ISC) has been submitted to the Underground Storage Tank Branch
- State Clean-up Program - a remediation work plan has been approved by IDEM
- Voluntary Remediation Program - a voluntary remediation agreement (VRA) has been approved and **signed** by IDEM

If the above actions have not occurred before or during the transition period, then the responsible party, or applicant, must utilize the RISC Technical Manual and User Guides. After the transition period, a responsible party shall complete the implementation of any work plans, closure plans, or other documents approved during or prior to the transition period according to their terms. These documents will not ordinarily be re-opened merely because they reflect “existing” guidance.

Definition of existing guidance:

- RCRA - OSHWM’s July 25, 1997, Hazardous Waste Management Unit Closure Guidance document or the draft RISC document in effect at the time the closure plan was submitted
- RCRA Corrective Action - EPA Superfund Guidance (RAGS)
- State Cleanup, EPA Superfund Guidance (RAGS)
- Leaking Underground Storage Tanks - the October 1994, Underground Storage Tank Branch Guidance Manual
- Voluntary Remediation Program (VRP) - The VRP July 1996 Program Resource Guide

Please note that, under either RISC or “current” guidance, non-default approaches may be applied in appropriate circumstances when supported by a reasonable demonstration of validity.

MEMBER RECOMMENDATION NUMBER 4.

SOURCE: David Benshoof

Recommendation: There are a number of technical issues, policy issues, and key definitions that need to be discussed prior to the issuance of the final RISC document. **I recommend that IDEM continue working with the RISC Advisory Group and does not finalize the RISC document until all outstanding issues and concerns have been addressed. As related to the draft RISC document transition policy, I would recommend the transition period be increased from 6 months to a one year time frame.**

MEMBER RECOMMENDATION NUMBER 5.

SOURCE: Ginny Mahoney on behalf of Indiana Energy, Inc.

RE: the transition to RISC from the current programs.

It is recommended that IDEM and the regulated community maintain the ability to use existing programs and the remediation standards developed thereunder for a period of up to three years after the effective date of RISC.

MEMBER RECOMMENDATION NUMBER 6.

SOURCE: Bill Beranek, Ph.D., Indiana Environmental Institute

Indiana land and ground water contamination policy

The Subcommittee determined that the IDEM efforts to craft a consistent, cost-effective, public health protective policy are having difficulty. There is dissatisfaction on the part of many parties. The process necessarily is a complex, long discussion with different parties speaking different languages trying to reach different objectives.

After listening to testimony about Pennsylvania land recycling program, it determined that further exploration of legislative remedies to help provide direction the RISC process is needed.

The small group evaluating alternative state approaches noted that other states have avoided the dilemma Indiana finds itself in by two means:

- (1) greatly relieving state liability to a land owner that did not cause the contamination; and
- (2) treating the brownfield efforts differently from the remediations mandated by regulatory programs such as RCRA.

Alternative approaches have been suggested by the diverse members of the small group. Some are concerned that RCRA Corrective Action policies are unnecessarily strict. Some are confused about the RISC document policies for UST/LUST. Others believe that the voluntary remediation program is becoming too prescriptive and too strict and still others believe it is not strict enough. The brownfield program is in a state of development and uncertainty as to whether it is a remediation program or not.

All agree that all IDEM programs addressing land contamination allow risk-based decisions. However, much of the dispute is because the current RISC document is not yet adequately clear about how each of these IDEM program areas will make decisions for nondefault circumstances incorporating site-specific risk-based decisionmaking.

Some parties want to assure that mandatory regulatory program site evaluations and remediations are reasonable. Others want a program to assure their site is free from existing unacceptable contamination problems. Others want a rational policy allowing contamination to remain in place provided the land owner and the government together can assure no risk as long as the property is being used in a certain way or as long as certain exposure barriers are maintained. These radically different closure needs require substantively different data gathering objectives, different risk-based remediation objectives and different closure decisions. Although certain principles and techniques are generally applicable, a single set of RISC guidance appropriate for one may well be inappropriate for the objectives and purposes of another.

The Subcommittee recommends the IDEM RISC Advisory Work Group report to EQSC answering the following questions for each of the following five IDEM programs: RCRA Subtitle C; VRP; State Clean-up; UST/LUST; and Brownfields.

- 1. What closure decisions does the program make and what does each of those decisions mean in terms of future obligations, protections and vulnerabilities to state and others?**
- 2. For each of the closure decisions a program makes:
how will the RISC default provisions be used and by whom?**

- how will nondefault, site-specific, risk-based be made and by whom?**
what guidance is used to make nonfault decisions in the program?
- 3. Which RISC policy principles apply absolutely to all programs and when? Which RISC technical procedures apply absolutely to all programs and when?**
- 4. How does each closure decision for each program consider exposure barriers?**

The Subcommittee recommends that EQSC consider legislation to relieve property owners of liability for contamination they did not cause provided the owners know the contamination, tell IDEM and take due care to prevent any harm to anybody and to prevent exacerbation of the contamination risk.

RISC transition

If there is a RISC Manual developed that lists explicit protocols a government program must follow and if those protocols at the time the manual is adopted by the agency are different than what the program is requiring at the time, then a decision must be made regarding whether parties already engaged with the agency on a site characterization or remediation must change to the new protocol, must stay with the old protocol or have a choice.

Since some properties can be engaged for many, many years in one form or another, a fair, clear transition protocol is important.

Are the decisions the same for each program? Since UST/LUST with RISC or without should be equivalent in terms of protection, it makes sense to be lenient in allowing the party to choose if the start in any sense occurred before the formal start to RISC. Since VRP has a work plan and time frames, one natural break is the point at which a work plan is submitted for IDEM approval (favored by applicants) and another is the point of work plan approval (favored by IDEM). For RCRA the issue is probably more the opposite: which programs already begun can stop and restart under the new protocol? That negotiation is likely a small part of a much larger, more complex RCRA negotiation.

Any protocol adopted by legislation for such a transition can be abused by either the party or by IDEM. Really what needs to be gauged is amount of investment lost by a forced switch after voluntary commitment to the earlier system or amount of delay to restart under new if remediation is being forced.

The Subcommittee considered a minimum transition period of one to two years be allowed for applicants to choose between the new and the old in order to give parties time to understand how the new RISC policies will be implemented in a program. It was clear that the Subcommittee wanted IDEM to avoid the situation in which a party was well underway with an investigation or remediation in cooperation with IDEM only to have IDEM change its mind in the middle of the project.

ISSUE II. CONTINUE TO LOOK AT WATER-RELATED ISSUES. [SB 343 and general mandate under P.L. 248-1996, SECTION 1(j)]

MEMBER RECOMMENDATION NUMBER 1.

SOURCE: Tim Method of IDEM

Combined Sewer Overflows/Wet Weather

IDEM recommends that the process recently established whereby the IDEM Wet Weather Technical Advisory Group makes recommendations to IDEM's Water Quality Advisory Group on revisions to the existing water quality standards to provide greater flexibility to combined sewer overflow communities be continued. **IDEM should take action as early in 2000 as possible to effectuate the recommendations of the Water Quality Advisory Group** by pursuing rules before the Water Pollution Control Board. The wet weather rulemaking should proceed independently of the triennial review of water quality standards unless these rulemakings can be coordinated such as not to delay the wet weather rule.

Special Designations/Outstanding State Resource Waters

The ongoing discussions by IDEM's Water Quality Advisory Group should continue and be completed as soon as practical. IDEM should incorporate the Group's final recommendations on this issue into the ongoing rulemaking and pursue a timely revision to the Water Pollution Control Board rules.

Total Maximum Daily Loads

IDEM will continue to develop the policies and procedures for developing Total Maximum Daily Loads for waterbodies within Indiana. The policies and procedures will be shared with the public.

MEMBER RECOMMENDATION NUMBER 2.

SOURCE: John R. Wilkins, Eli Lilly and Company

NOTE: THIS RECOMMENDATION, WITH THE AMENDMENT THAT FOLLOWS AS OFFERED BY MR. KYLE, WAS ENDORSED BY THE LAND AND WATER SUBCOMMITTEE.

Policy Regarding Waterbody Special Designations

A policy that specifies the criteria for future designations of water bodies that ensures only those streams that are in relatively underdeveloped areas with excellent water quality will receive OSRW (outstanding state resource water) or ONRW (outstanding natural resource water) designation is essential. The use of water body designations as a tool to protect existing, high quality waters is appropriate. However, the process should not be used as a tool to clean up water bodies that are currently in highly populated, developed watersheds. In fact using water body designations in this manner will result in slower progress in improving water quality in Indiana. By designating streams in developed watersheds as OSRW or ONRW, future economic investment will be curtailed. Existing industry and municipalities will have not economic incentive to invest in new pollution prevention or wastewater treatment technologies if they are told they will no longer be able to expand their cities or their plants. Billions of dollars in improved wastewater technologies have been invested in this state by municipalities and private entities over the past 20 years. It is vital that our state water quality policy encourages similar investment in the future. Therefore, the Land & Water Subcommittee should adopt the following recommendation:

The Subcommittee recommends that before the Board adopts a rule designating a waterbody as an OSRW or ONRW that the waterbody should be considered of outstanding quality as determined using recognized biological scoring models and criteria. Furthermore, the economic impact of the

designation and degree of existing urban and agricultural development must be considered.

MEMBER RECOMMENDATION NUMBER 3.

SOURCE: John Kyle

NOTE: THIS AMENDED VERSION OF THE RECOMMENDATION OFFERED BY MR. WILKINS WAS ENDORSED BY THE LAND AND WATER SUBCOMMITTEE.

Policy Regarding Waterbody Special Designations: Proposed Amendment to Wilkins Proposal

(The Subcommittee should recommend that ...) **Before the Water Board can designate a waterbody as an OSRW or ONRW, it must be demonstrated that the waterbody has outstanding water quality as determined by recognized biological scoring models and criteria. To overcome this presumptive requirement of outstanding water quality, it must be demonstrated that the waterbody possesses truly unique or special features. In addition, before any waterbody can be designated OSRW or ONRW, the Board must also evaluate the economic impact of the designation and the degree of existing urban and agricultural development.**

[i.e., there is a presumption that the Water Pollution Control Board cannot adopt a rule designating a waterbody as an OSRW or ONRW unless the waterbody is considered of outstanding quality, as determined using recognized biological scoring models and criteria. However, this presumption can be rebutted -- and a waterbody can be designated an OSRW or ONRW even if it is not considered of outstanding quality -- if the waterbody is demonstrated to possess truly unique or special features.].

MEMBER RECOMMENDATION NUMBER 4.

SOURCE: Bill Beranek, Ph.D., Indiana Environmental Institute

NOTE: THIS SET OF RECOMMENDATIONS WAS ENDORSED BY THE LAND AND WATER SUBCOMMITTEE.

OSRW

The Subcommittee heard that the current Indiana Outstanding State Resource Water (OSRW) regulation assigning “no degradation” to a group of already developed water bodies means a severe impediment on development and economic growth in areas such as the Lake Michigan basin. The environmental advocates prefer the regulation to remain as it has been since 1990 by a regulation of the Indiana Water Pollution Control Board. The business community prefers the regulation to be changed eliminating this special category because the implications were not understood by the Water Board at the time. The two sides have been polarized in rulemaking deadlock for four years since USEPA has insisted the State implement its regulation, at least for the Great Lakes Basin.

The Subcommittee heard that the IDEM Commissioner’s Water Quality Advisory Group, formed in August, was aggressively working to craft a solution to the OSRW issue acceptable to most in business and environmental communities. The solution being considered would allow increases in parameters within the limits of ordinary water quality permit conditions but in these special waters would require that the

discharger cause a project to be done that would result in net improvement in the quality in the watershed. *Selection of the project would have public involvement.* The advisory group hopes to have a specific regulatory or legislative recommendation by December which is supported by most of environmental advocate community and most of regulated community.

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this OSRW dilemma and, because this is key public policy issue, favors legislative action supporting such a concept.

Wet Weather Permits

The Subcommittee heard testimony from municipalities dissatisfied about the IDEM efforts to match what needs to be done to address the combined sewer overflow (CSO) challenge with the current wording of the Indiana water quality standard for full-body contact in all waters. It determined that the state and the municipalities were both agreed to strategies whereby as much as reasonably affordable would be the expected controls over the next decades to solve the bulk of the problem. The dilemma is that the USEPA is demanding the CSO NPDES permit to include language that it be a violation of the permit if the current Indiana water quality standard for this is not always met. That would be a practical impossibility for most communities. Unless IDEM can find permit language to avoid this and be satisfactory to USEPA, the choice is to change the Indiana standard either by statute or by regulation.

The Subcommittee heard that the Water Quality Advisory Committee, itself advised by a newly created IDEM-organized Wet Weather Technical Advisory Committee of external technical experts, may have a regulatory or legislative solution to recommend in December to solve the wet weather water quality standard/permit Indiana conundrum that 106 Indiana CSO communities find themselves caught in. The solution includes a creating by regulation or statute a means for the Indiana full body contact designated use to be temporarily suspended after a storm event at a CSO specifically determined by NPDES permit. It includes encouraging IDEM to issue permits for municipal sewage treatment plants to have adjustable conditions for wet weather.

The Subcommittee heard that the State should do much more to develop solutions to the serious funding dilemma faced by cities and towns as they must cope with expensive new studies about use attainability and engineering projects.

The Subcommittee supports the general direction of the Water Quality Advisory Group to develop a resolution of this dilemma which is supported by the regulated community, the environmental advocate community and the technical community and, because this is key public policy issue, favors legislative action supporting such a concept.

Antidegradation of nonBCCs; sediment quality as a water quality standard and biological integrity as a water quality standard

The Subcommittee recommends the same policy on antidegradation, sediment quality and biological integrity it did from the 1998 EQSC surface water policy deliberation. This is because IDEM continues to include these three concepts in the on-going triennial rulemaking before the Water Pollution Control Board, despite the caution raised by the EQSC last year and in S.B. 343. Each of these issues has federal rulemaking underway to determine the federal government policy. The Subcommittee understands that the

Commissioner's Water Quality Advisory Committee is planning to consider these issues in the coming months.

(a) antidegradation procedures for nonBCCs

For the antidegradation procedures, there is currently in Indiana statute and regulation authority to include into an NPDES permit any condition required by the proposed rules. Having the new regulation, however, would lock in a certain interpretation of the antidegradation policy before federal policy is complete, like the Water Pollution Control Board did at IDEM's request for OSRW in 1989 and for a BCC policy in the early 1990's. This would reduce Indiana flexibility to attain water quality goals compared to other states. USEPA should clarify the very questions it posed in the preamble to its rulemaking begun in 1998 about the nature of antidegradation before Indiana commits in rules to procedures it may not prefer later.

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends that IDEM not proceed with rulemaking on antidegradation procedures for nonBCCs.

(b) sediment quality as Indiana water quality standard

IDEM wishes, at EPA Region V request, to include general text declaring sediment quality to be an inherent Indiana water quality standard. Currently in Indiana, there is adequate authority to include in an NPDES permit any conditions that would protect the quality of sediment considered to be at risk. The proposed language adds neither clarity nor power to that authority. It does, however, allow USEPA to consider a harm to the sediment by to-be-determined criteria to be a violation of the Indiana water quality standard.

The Subcommittee prefers USEPA to promulgate its own rule (in process), or at least get its ideas about sediment harm more clearly in focus, before Indiana promulgates wording making sediment quality per se an Indiana water quality standard.

Pending deliberations and advice of the Water Quality Advisory Group, the Subcommittee recommends the Water Board not promulgate sediment quality as a water quality standard at this time but that it encourage IDEM to incorporate both into permits and into IDEM water monitoring greater studies of sediment quality. Upon finding impaired sediments, IDEM should then determine cause and prevent further contamination.

(c) biological integrity as Indiana water quality standard

IDEM wishes, at EPA Region V request, to include general text declaring biological integrity itself to be an inherent Indiana water quality criteria. Biological integrity means closeness to the "proper" ratios and numbers of species and individuals of the complete suite of appropriate species for a particular reach of a water body. The issues are identical to the sediment quality as a water quality. To the extent IDEM has identified in advance what that correct ratio is and how it is to be measured accounting for natural and other physical, biological and chemical changes in a given stream segment, then discharge conditions IDEM considers appropriately protective can be placed in a permit. But declaring the ratio and number of species themselves to be the responsibility of the discharger is inappropriate. It is especially inappropriate because the discharger is not informed of the "correct" integrity characteristics, those being determined by EPA or IDEM later. Then it becomes a violation of an Indiana water quality standard and discussions are about enforcement.

On the other hand, expanded use by IDEM of biological integrity measures as a tool to explore the impact of specific discharges, such as effluent waters disinfected with chlorine, is strongly encouraged.

The Subcommittee supports and encourages the use of biological integrity as a tool for IDEM monitor the quality of Indiana waters and, when justified, to include requirements for studies in permits. *Pending the deliberations and advice of the Water Quality Advisory Group*, the Subcommittee opposes the inclusion of biological integrity itself as an Indiana water quality standard until USEPA has clarified what is meant in a manner that all parties can understand the quality expectation in the same way.

Indiana Surface Water Quality Data Collection

The foundation of issuing sound NPDES permits and of identifying, prioritizing and addressing impaired waters is data collection. Indiana historically has had and presently has inadequate data either to set proper numeric criteria and designated uses, to identify impaired water bodies and to identify nonpoint sources contributions to the impairment.

The Subcommittee heard testimony about the uncertain guidelines of data collection for assigning streams to the impaired body list (303(d)). It heard of inadequacy of written IDEM guidance about data for prioritizing streams for attention by the TMDL initiative. It heard of inadequacy of the data in the nonpoint source initiatives, *including inadequate attention to tributaries of rivers with identified exceedences*.

The Subcommittee recommends the Governor appoint a Water Quality Data Task Force to assess the physical, chemical and biological data water resource at IDEM, the quality assurance protocols, the needs for improved data quality and the options for obtaining and maintaining an adequate data base for standard-setting (e.g. site-specific metal toxicity, site-specific BAF and site-specific use attainability) and for addressing impairment. The task force shall include representatives from academia (including biological, chemical and hydrological), IDEM, IDNR, USGS, private chemical laboratory, business, agriculture, environmental advocate, municipality, general citizen, Water Board member and four legislators.

NOTE: THE FOLLOWING WAS SUBMITTED BY IDEM DEPUTY COMMISSIONER TIM METHOD IN RESPONSE TO SENATOR GARD'S INVITATION FOR MEMBERS TO SUBMIT VIEWS DIFFERING FROM THOSE ENDORSED BY THE SUBCOMMITTEE:

November 22, 1999

EQSC Land and Water Subcommittee:

Comments of IDEM on Land and Water Subcommittee Report to EQSC

IDEM appreciates the opportunity to comment on the recommendations of the subcommittee as discussed at the November 19, 1999 meeting.

IDEM generally agrees with the recommendations as described by Dr. Beranek for issues related to 1999's Senate Bill 343 (with the amendment discussed by Sen. Gard offered by Eli Lilly) with the exceptions and discussion as follows:

A. Outstanding State Resource Waters

IDEM generally agrees to defer to the current Water Quality Advisory Group process.

B. Wet Weather

IDEM generally agrees to defer to the current Water Quality Advisory Group process. IDEM is very interested in working with legislators and others on legislative language to effectuate the wet weather recommendations.

C. Antidegradation of non-BCCs; Sediment and Biological Criteria

IDEM believes that the Water Quality Advisory Group should proceed with its intent to discuss these three issues, which have been raised in the ongoing Triennial Review of the State's Water Quality Standards. These issues have not been substantively discussed by the Water Quality Advisory Group or the EQSC Land and Water Subcommittee. Therefore, we believe the recommendations by Dr. Beranek are premature. Because there will be adequate opportunity in these forums and the triennial review rulemaking to effectively debate the policy issues associated with these issues, IDEM does not believe that it is necessary that the subcommittee must make recommendations on these items at this time.

D. Indiana Surface Water Quality Data Collection

IDEM agrees that further evaluation is needed of the state of available surface water quality data for Indiana. A forum to have public discussions on this matter makes sense. There has not been significant discussion at the subcommittee or elsewhere about whether the specific Task Force suggested by Dr. Beranek's recommendation is the best approach. IDEM will work with the legislature and the public in any forum established to discuss surface water quality data in Indiana.

Policy Regarding Waterbody Special Designations (language offered by John Wilkins)

IDEM does not agree that all waterbodies should be precluded from being designated as outstanding state resource waters unless they are deemed excellent for biological quality. John Kyle volunteered to provide alternative language which would revise the mandate for outstanding biological quality to it being a rebuttable presumption. The alternative language may alleviate our concern. IDEM also believes that the options currently being considered by the Water Quality Advisory Group for outstanding state resource waters should be finalized before a decision is made on criteria for designation.

The Subcommittee also discussed the Hazardous Waste Manifest Program and RISC.

Hazardous Waste Manifest Program

IDEM participated in discussions this past week on alternatives to the existing hazardous waste manifest program. We are comfortable working with Senator Simpson and others to work out details about an alternative approach.

As noted at the subcommittee meeting, IDEM is of course interested in identifying an appropriate means of replacing the revenues from the existing manifest program in order to continue to have a strong hazardous waste program. Much of the existing manifest revenue was intended to be used to support the hazardous waste permit and compliance program when the fee structure was established in 1994. Currently, about

\$600,000 in funding is obtained for general hazardous waste regulatory work from the hazardous waste generators in Indiana and other states that would have to be replaced by either fees or taxpayer dollars.

RISC

IDEM supports the inclusion of the varied recommendations from Land and Water Subcommittee in the report to the EQSC.

Regarding possible legislation, IDEM believes that much more discussion is needed to identify feasible and needed legislation than what has occurred to date. To date, a clear purpose has not yet been articulated. IDEM will be glad to participate in any further discussions and provide whatever information is needed for the legislature and others to use in considering possible legislative changes.

ISSUE III. REVIEW THE HAZARDOUS WASTE MANIFEST PROGRAM. [HEA 1578: SECTION 9.]

Recommendations, if any, by December 31, 1999

MEMBER RECOMMENDATION NUMBER 1.

SOURCE: Tim Method of IDEM

The Hazardous Waste Manifest Program should be maintained as it is for the following reasons:

- The program collects information from small quantity generators which is not otherwise tracked or collected.
- A replacement program to collect the same data provided by the manifest program would result in additional reporting burdens on industry which would still have to utilize a manifest to ship hazardous waste.
- Fees collected by the sale of manifest forms would have to be replaced through some other fee levy to provide equivalent financial support for the agency's compliance and permitting system.

MEMBER RECOMMENDATION NUMBER 2.

SOURCE: David Benshoof

Recommendation: The enabling legislation of the Indiana manifest tracking program needs to be repealed or amended to reflect the intent of IDEM's current program. If repealed and not amended, the program would automatically revert back to EPA's hazardous waste manifest requirements. The reason for the recommendation is:

- 1) Tracking the waste by sending copies to the State has seldom caught illegal disposal.**
- 2) The current program goes beyond tracking and is being used for compliance assistance, pollution prevention efforts, and by IDEM compliance officers prior to facility inspections.**
- 3) The current cost to run the program is 75% higher than the intended cost of the original legislation.**

4) Given that a small quantity generator (SQG) data base has been established by the current program, an on-going biennial "certification letter" requirement could be established to maintain the SQG data base if the law is repealed.

MEMBER RECOMMENDATION NUMBER 3.

SOURCE: Mike Frey

Recommend change to Indiana's Hazardous Waste Manifest Program:

Leave the program in place; no change to cost but transfer extra fees collected (above amount needed to administer program) to the Hazardous Response Trust Fund administered by OPPTA/IDEM to fund HHW grants. (There is little or no new money going into this fund.)

MEMBER RECOMMENDATION NUMBER 4.

SOURCE: Bill Beranek, Ph.D., Indiana Environmental Institute

The original purpose of the special IDEM program requiring hazardous waste manifest copies to be mailed to the state was to assist the state to track missing shipments of hazardous waste.

The Subcommittee determined that the original purpose is not being met nor is that purpose any longer an important need.

However the Subcommittee determined that there are three useful functions IDEM's hazardous waste manifest collection program is now fulfilling. Elimination of the hazardous waste manifest tracking program requires a decision on whether or how to substitute for those functions.

IDEM oversight of small quantity generators (SQG)

Unlike large quantity generators, USEPA does not require SQGs to be inspected. IDEM now inspects SQGs only to respond to complaints or as a part of a special industry-wide initiative.

Receipt of a copy of every manifest is the only notice the State has of much of the state's SQG activity and the only reminder to these parties that the State is still watching.

States without a mandate to mail in copies of the manifest oversee the SQG activity either by requiring the in-state SQG to submit an annual report of its activity or by implementing a regular inspection program of the in-state SQG, like the large quantity generators have.

If an annual report is instituted in Indiana for SQGs, its content should be mandated by regulation or law (such as be restricted to the type of information on a manifest or on a federal biennial report) in order that it not become a long survey over the years. An additional decision would be whether to then also require an annual report for large quantity generators and TSDs. If there is annual report for TSD, then out-of-state generator information could be supplied to state via that means. IDEM staffing will need to adjust.

If an inspection program is instituted, IDEM staffing will need to be adjusted to this new priority.

Maintenance of Indiana Hazardous Waste Data Set

The subcommittee determined that most state hazardous waste generation and disposal information on alternate years comes from the manifest copies now sent to the state. The subcommittee did not study the hazardous waste data needs of the State and the best, most cost-effective way to obtain that.

If the manifest collection requirement is eliminated, however, and that information is to be maintained, it could be obtained by requiring annual report of all parties, as discussed as one option for SQG oversight.

Shipment Fee from Generators to Support Hazardous Waste Program

In 1994, the General Assembly raised the fees for Indiana manifests to \$8 in order to allocate the total costs of the IDEM hazardous waste program as fairly as it could. The annual revenues from this fee now are \$800,000 with roughly half from out-of-state generators disposing of waste in Indiana. This fee is the only way SQG's contribute to cost of hazardous waste program. (The other industry revenue source for the program are permit fees and large quantity generator annual fee.)

If the manifest collection fee is eliminated, equivalent revenues must be obtained from other sources.

One suggestion for revenue substitution would be to add an equivalent fee for out-of-state generators disposing of waste in Indiana (e.g. \$8 per shipment) to be collected by TSD and paid quarterly to State and an annual assessment on in-state generator on number of shipments or quantity of waste transported the previous year (e.g. \$8 per shipment). This should be revenue approximately neutral to current parties paying manifest fee and could be tied to annual reports.

Other allocation choices are available (perhaps fairer on ability to pay or on amount of IDEM work party causes), reopening the 1994 fee allocation debate with special interests having own preferences.

The Subcommittee was told that a legislator was proposing to introduce legislation to eliminate the tracking program, the printing of state manifests and the manifest fee effective January 1, 2001. It would be replaced by a new state requirement for an annual report on hazardous waste activities to be submitted by all small and large quantity generators. The information would be similar but less extensive to the information required now by federal regulation of large quantity generators for one calendar year every other year. This would mean an \$400,000 loss of revenues to IDEM in the final half year of the current biennium budget approved by the 1999 General Assembly and \$800,000 per year thereafter. The policy of whether or how to replace the lost funding to hazardous waste program after January 1, 2001 was not addressed. A Subcommittee member expressed concern that this new system could be much more burdensome to the generator with several shipments per year than the current system of submitting a copy of the manifest to the state with each shipment.

Possible Legislative Recommendation:

A. Substitute Manifest Collection by Annual Report

Because core to any legislative change would be understanding the preference of the business community for an annual report instead of a mailing manifest copy, the next step would be to assess that preference.

The Subcommittee recommends a resolution to ask IDEM:

- (1) to convene a hazardous waste manifest advisory panel of representatives of generators and hazardous waste management industry;**
- (2) to develop with the panel the details of a simple proposed annual report to consider to substitute for the manifest tracking program;**
- (3) to develop a simple survey to assess preference of large quantity generators and of small quantity generators about sending in copies or an annual report;**
- (4) to survey a representative number of generators for preference and advice for improvement and**
- (5) to report to EQSC by August 15, 2000 the results.**

OR

The Subcommittee endorses legislation to eliminate the requirement to purchase and submit a state hazardous waste manifest and to substitute the current manifest collection system with the requirement that each small quantity generator, large quantity generator and TSD permitholder submit an annual report to IDEM about its hazardous waste management activity.

B. Eliminate the \$8 manifest fee and thus \$800,000/year revenues for operation of IDEM Hazardous Waste Program

The Subcommittee recognizes some \$200,000 per year was spent processing manifests and maintaining the data base. The expenses to process the collected manifests will be eliminated but new expenses to process the new annual reports will be incurred. The expenses to maintain the data base of hazardous waste information will remain the same. The subcommittee recognizes that the remaining \$600,000 per year was support for the basic program itself, supplementing fees from in-state TSDs and annual fees on large quantity generators.

The Subcommittee recommends elimination of the fees with no recommendation of how or whether to substitute the revenues.

OR

The Subcommittee recommends EQSC or Governor appoint a panel with representative stakeholders to recommend alternative fiscal strategy.

Members

Sen. Vi Simpson
Rep. Mark Kruzan
Rep. Richard Mangus
Rep. David Wolkins, Chairperson



Lay Members

Hon. Jack Fowler
William Goffinet
Max Goodwin

Advisory Members

Bill Hayden
Tim Maloney
Guinn Doyle
Vince Griffin
Blake Jeffrey
Mike Pitts
John Wilkins

APPENDIX 4

IDEM ADMINISTRATIVE ISSUES SUBCOMMITTEE

LSA Staff:

Craig Mortell, Attorney for the Council
Bernadette Bartlett, Fiscal Analyst for the Council

Authority: P.L. 248-1996 (SEA 138); EQSC
Minutes, June 29, 1999

SUBCOMMITTEE STATUS REPORT AS PRESENTED ON NOVEMBER 23, 1999

I. ISSUE ASSIGNED TO THE SUBCOMMITTEE

The issues assigned to the Subcommittee, the sources of the issues, and the deadlines for the EQSC's actions on the issues, are as follows:

ISSUE: Allocation of costs of services supported by IDEM dedicated funds.

SOURCE: HEA 1578, SECTION 8. *(a) For funds established under IC 13 to provide a source of money for a specified purpose, the department of environmental management together with the environmental quality service council shall conduct a study to evaluate different approaches for determining the allocation of the costs of all department-wide services that support the funds.*

(b) Not later than November 1, 2000, the environmental quality service council shall make written recommendations based on the findings of the study conducted under subsection (a) to the:

(1) legislative council; and

(2) budget agency.

(c) This SECTION expires December 31, 2000.

DEADLINE: Written recommendations required by November 1, 2000.

ISSUE: Permit Accountability Time Frames.

SOURCE: HEA 1919, SECTION 19. [EFFECTIVE JULY 1, 1999] *(a) The environmental quality service council shall:*

(1) review the permit accountability time frames outlined in IC 13-15-4-1, as amended by this act, and 326 IAC 2-5-2; and

(2) make legislative recommendations based on the review conducted under subdivision (1), if appropriate.

(b) This section expires October 1, 1999.

DEADLINE: General EQSC reporting deadline of December 31, 1999.

ISSUE: IDEM Enforcement Policy Providing Relief from Civil Penalties for Voluntary Disclosure

SOURCE: HEA 1919: SECTION 16. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS: *Sec. 11. (a) The department shall maintain statistics on the use of environmental audit reports in department compliance and enforcement activities, including statistics on:*

- (1) the number of times the reports are disclosed to the department;*
- (2) the number and types of violations disclosed to the department through the reports;*
- (3) the civil penalties collected for the violations; and*
- (4) the time necessary for the violations to be corrected.*

The department shall report annually to the environmental quality service council on the use of environmental audit reports.

(b) The department shall propose an enforcement policy, pursuant to IC 13-14-1-11.5, that provides relief from civil penalties for a voluntary disclosure that results from an internal environmental audit. In developing this enforcement policy, the department shall consider similar policies implemented by:

- (1) the United States Environmental Protection Agency; and*
- (2) states contiguous to Indiana.*

(c) The department shall report annually to the environmental quality service council on the use and effectiveness of the enforcement policy.

DEADLINE: No EQSC deadline. Only a requirement to receive IDEM's annual reports.

II. MEETING HELD AND ISSUES DISCUSSED

(1) August 4, 1999:

Review the charge and duties of the Subcommittee. The Subcommittee's assignments:

- With IDEM, conduct a study to evaluate different approaches for determining the allocation of the costs of all department-wide services that support certain IDEM dedicated funds.
- Review and make legislative recommendations concerning the permit accountability time frames outlined in IC 13-15-4-1. **SPEAKER:** Jeff Underwood, Controller, IDEM.
- Review and discuss the proposed enforcement policy of the IDEM that would provide relief from civil penalties for voluntary disclosures resulting from voluntary internal environmental audits. (IDEM is to present the proposed policy to the EQSC before September 1, 1999.)

Report to
The Environmental Quality Service
Council

Date: December 7, 1999

Issue(s): Potential Legislative Initiative – Risk Based Cleanup – Land Recycling
Comparison of Selected State Statutes – Suggestions for Future Action

Background / Statement of Purpose

At the request of Senator Beverly Gard, a small group of interested individuals who were part of the Land and Water Subcommittee convened to address the *potential need for a legislative initiative in an effort to preserve the Brownfields / Voluntary Remediation Program(s) given the perceived potential negative effect of the currently developing policy on risk based cleanups entitled "Risk Integration System of Cleanup" or "RISC."* Additionally, having recently had the Pennsylvania Department of Environmental Quality present testimony to the EQSC on their successful land recycling program, further exploration of a legislative remedy seemed appropriate.

There was general agreement that among other things, it would be beneficial to review various state statutes which have been passed that implement risk based cleanups for Brownfields, and, although perhaps *premature, suggest potential resolutions should the need arise since it is unclear, given RISC is still being refined and not yet final, of its impact to any of the state cleanup programs.*

The only meeting on the subject occurred on November 9, 1999 from 9am to noon at the Indiana Energy offices at 1600 North Meridian Street in Indianapolis.

Those in attendance and representing included:

William Beranek, Jr. Ph.D.	Indiana Environmental Institute, Inc.
Elizabeth L. Dusold	Eli Lilly, Inc.
Vincent L. Griffin	Indiana Chamber of Commerce
Greta J. Hawvermale	Indiana Development Finance Authority
Sharon A. Hilmes	Baker & Daniels
Ginny Mahoney	Indiana Energy, Inc.
Bruce Palin	Indiana Department of Environmental Management
Rae Schnapp, Ph.D.	Hoosier Environmental Council

Note: Because the interested parties did not vote on whether to endorse any of the suggestions contained herein, the inclusion of their name in this report should not be interpreted as a sign that they individually, or as a part of the majority of the parties who met, support these suggestions.

Discussion

Prior to evaluation or analysis of the selected state statutes, it is important to understand the following key concepts on which this discussion/memo is predicated:

1. The development of risk based remediation or cleanup objectives is intended to facilitate cleanups since they are – by design – predicated on and determinative of the cumulative risk (i.e., evaluation of all exposure pathways) of a given site.
2. Development of risk based remediation objectives has facilitated Brownfields programs by determining a more reasonable cleanup objective.¹
3. The RISC policy guidance – or the mechanics of site characterization and acquisition of data in order to conduct/perform risk based cleanups (i.e., actual implementation of risk based decisions) is addressed very selectively and constitutes only a very small, but important, aspect of the statutes that were reviewed.
4. The Indiana Brownfields Program is not a cleanup program but employs cleanup criteria from the Indiana Voluntary Remediation Program (VRP); therefore, by reference/agreement the VRP becomes Brownfields cleanup criteria²; and for

¹ A recent article put it this way: "Increasingly many state legislators have questioned the efficiency of making Brownfields sites so clean that the 'preschoolers can eat the dirt at recess' even though the site may be redeveloped into a parking lot or commercial land use with limited possibility of dermal contact." Marc J. Rogoff, "Status of State Brownfields Programs: A Comparison of Enabling Legislation." *Remediation Management*, Second Quarter, 1997.

² "Though separate programs, Brownfields and VRP are both voluntary and may be used in conjunction or cooperation with each other. For example, Brownfields Program assessment activities use VRP criteria. A Brownfields property needing remedial action would be required to comply with all applicable state and federal cleanup standards that are designed to protect human health and the environment, and the property may be referred to VRP for remediation which the Brownfields Program may support through its various funding services." *Brownfields Bulletin*, 3rd Quarter, 1999, Issue 4, Page 5.

this reason there is, as previously discussed, concern relative to the currently unknown, but potentially negative impact by the RISC policy/guidance.

5. This review will not include a discussion on the redefinition of liability for Brownfields developments or financial incentives which is the primary purpose of the statutes; although a very important part of a Brownfields program, these aspects were ably covered in detail by LSA attorney, Mr. Craig Mortell by memo dated September 10, 1999.

Selected Evaluation of Portions of State Statutes

Attached hereto as **Attachment 1 – Selected Comparative Analysis – Brownfields Statutes** is the a general comparison of three Brownfields state statutes (Pennsylvania, Illinois, Michigan) which employ risk based decisions in Brownfields cleanups.

The analysis is a targeted review of those technical aspects which the states deemed important enough to codify into statute. All define – in statute the risk based remediation objectives for carcinogenic and noncarcinogenic risk factors – all are between 10^{-4} to 10^{-6} , with noncarcinogenic as measured by Hazard Index of ($<$) 1.0; all have very specific criteria for groundwater cleanups – with Illinois' set forth in another state statute; two of the three define “background” within the statute; all allow institutional controls in general with a requirement that if the land use changes, further investigation – and remediation may be necessary; all use deed restrictions for control of property – associated with pathway elimination, with authority to use in the statute; no other state cleanup program is specifically identified within the statute as being able to use the risk based remediation objectives established by these statutes – the objectives and requirements contained in the statutes are for Brownfields programs only; however, with the exception of Michigan, the statutes acknowledge that risk based decisions can be used in other programs – Illinois goes the furthest by stating that “to the extent allowed by federal law, sites may use the provisions of the act including establishing risk based remediation objectives.”

Of note also is the general constraint to stringency contained in the Pennsylvania statute which identifies that for the Statewide health standards (they) “shall be no more stringent than those adopted by the federal government,” appearing to acknowledge the detailed history of risk assessments and risk based decisions relative to cleanups that have been performed by both state and federal governments since the early 80s. Additionally, both Pennsylvania and Illinois do not require remediation of regulated substances to levels less than area background levels and consider leachate produced via SW 846-1312 or a “valid peer reviewed scientific method” to be acceptable (to use for the leaching to groundwater pathway for subsurface soils).

Although review of the state regulations as required to be developed by each of the statutes was not performed, it is instructive to observe what is not included – note the absence of any criteria for site investigations or determination of the nature and extent of contamination; one might conclude that the states understood that there exists extensive, long standing guidance on the subject and determined not to codify any criteria for this aspect of the determination of risk based remedial objectives.

It is apparent that the statutes were created to address the Brownfields/land recycling issue; this concept is especially important as it relates directly to “smart growth” in states, including Indiana, that are seeing the decline in green space and farm ground because, among other issues, the financial community is reticent to address the unknowns associated with environmental cleanups and potential long-term liabilities. For this reason both the Pennsylvania and Michigan state statutes offer clear and detailed liability protection – placing liability on the polluting party to the extent the party is present/known, and clearly eliminating it from those not responsible. A national comparative ranking of Brownfields redevelopment programs³ conducted in 1998 indicates that Michigan ranks the highest in the country with Pennsylvania second among a group of states including Delaware, Missouri, Rhode Island and New Jersey (Indiana was in the third tier of states that included Illinois, Minnesota, New Hampshire, Ohio, Oklahoma, Washington and Wisconsin). Michigan has created very detailed liability protection – moving away from strict, joint and several liability to causation based. As reported in the above noted national comparative analysis of Brownfields programs – “The single most critical element that a state can enact to move toward a successful Brownfields redevelopment program is reforming liability mechanisms.” Michigan, as the result of creating statutory exemption for innocent owner/operators for liability protection, has created a climate for infusion of \$459 million in new investment at Brownfields sites, with the creation of 5,400 new jobs since its inception in 1995. Note however, that the move to causation based liability has reduced by approximately 50% the number of parties who may be liable for cleanup and has increased the necessary funding for state cleanups in Michigan by \$20 million since cleanups then are funded by state taxes.

What is the Potential Affect of RISC on VRP

It should be noted that the VRP already employs risk based remedial objectives, including the need to “If the applicant is proposing Tier III cleanup levels, for any contaminants, the Remediation Work Plan must include a site-specific Risk Assessment Report with proposed cleanup levels that follow the “Risk Assessment Guidance for Superfund,” (RAGS). The Risk Assessment must address site specific human health risks and may also address ecological risks if warranted. The contaminants to be addressed must be clearly identified. The discussion must include a description of data collection and evaluation techniques, including identification of any additional sampling needs.”⁴

³ *National Comparative Analysis of Brownfield Redevelopment Programs*, C.A. Cramer, CPG, Vice President, ARCADIS Geraghty & Miller, October 1998.

⁴ *Voluntary Remediation Program Guide*, IDEM, Office of Environmental Response, July 1996.

Again, the Indiana Brownfields Program is not a cleanup program; however, by reference, employs cleanup criteria from the VRP and therein the VRP becomes cleanup criteria for the Brownfields program. And for this reason there is, as previously discussed, concern relative to the unknown, but potentially negative impact by the RISC policy/guidance. Additionally, recent comments by IDEM that "RISC was never intended to address Brownfields" – when conversely RISC was always portrayed to be "Brownfields friendly" and would not have a substantive or negative impact on VRP have heightened concern. The concept of a negative or chilling effect on the VRP program by RISC has been a continuing concern for the regulated community. Additionally, it was learned that there is widespread use of the VRP Tier II look-up table as a screening tool by prospective users of both programs and the financial community. And since RISC changes the criteria for calculation of the health based numbers the VRP Tier II look-up table will change. Because of the potential for change to the program, a consultant familiar with both RISC and VRP criteria recently *conducted a side-by-side comparison of the two look-up tables* (in RISC and VRP)⁵. Results of the comparison indicate that while no consistently definitive trend emerges from the side by side comparison of the risk assessment process under VRP and RISC, both often giving similar results when comparing risk based concentrations developed for specific exposure pathways, the "Final" RISC/Tier1 cleanup standards are generally more stringent than the final Tier II cleanup goals under VRP. Additional conclusions of the comparison include:

- For the nonresidential scenario for groundwater, most chemicals have similar values, but RISC is more stringent for several chemicals where there is a difference in criteria;
- For surface soil, RISC is more stringent because it includes an additional pathway – the leaching to groundwater pathway; VRP cleanup goals are based strictly on direct contact exposure;
- An additional pathway is included in RISC which is not in VRP – the dermal contact pathway which is considered the dominant exposure route for many direct contact exposures under RISC – also US EPA considers this difficult to evaluate and their new guidance on this exposure route will likely be less conservative than that suggested by RISC.
- The VRP Tier II cleanup goals for subsurface soil are the lower of the direct contact criteria for construction worker or leaching to groundwater pathway, but RISC does not seem to distinguish between surface and subsurface soils, so it uses the same final Tier1 closure levels that apply to surface soil;
- RISC criteria are more stringent because risk-based concentration for direct contact and leaching to groundwater are both more stringent.

The most striking conclusion being that:

- The potential net effect could be more extensive cleanup requirements under RISC, which could increase cleanup costs and potentially discourage Brownfields redevelopment.

Additionally, although being required by HR 1919 to be "consistent with the remediation objectives set forth in IC 13-25-5-8.5 (VRP)" which, among others, refers to the use of standard equations, RISC incorporates pathways not present in VRP equations including the dermal pathway for residential and nonresidential land use scenarios and the leaching to groundwater pathway as described above; in addition, both serve to "qualify" the use of a risk assessment under RISC's Tier 3 option – which could be most useful to the Brownfields program, employing potentially as applicable to site specific conditions, the elimination of pathways.

Suggestions

Committee members were in agreement with the need to support the Brownfields Program because of its inextricable link between the ubiquity of Brownfields sites as the residual impact of urban decline and suburban sprawl. With each acre of farmland or forest sacrificed to development instead of a Brownfields revitalization project, economic disparity remains in cities while suburban or rural open land and green space diminishes. The relationship between Brownfields-based smart growth initiatives and securing good socioeconomic health for cities is mutually dependent. For this reason, careful and continued evaluation of RISC – and its ability to be used as a part of the Brownfields revitalization program is necessary.

Additionally, it is apparent that for maximum utility to all program areas, RISC must be flexible enough to be able to address cleanups under both Brownfields and other regulatory programs including RCRA; the RCRA program has recognized for years that site specific risk assessments are perfectly legitimate ways to establish an acceptable cleanup. RCRA has historically been risk-based and there is nothing inherent in the RCRA program that requires it to be more stringent concerning cleanup standards and site investigation; it simply has a more "regulatory" approach. However, the current version (February 99) of RISC may be problematic relative to this needed flexibility; but the discussions currently being held among IDEM and interested parties (i.e., the RISC Work Group) have resulted in increased awareness on the part of IDEM – with the next version of RISC being important in understanding if the necessary flexibility has been incorporated into the document, with the ability to conduct an "unqualified" (without prescriptive criteria characterized as "criteria that cannot be changed in Tier 3") risk assessment consistent with US EPA and general guidance including (e.g.) the ability to define the cleanup based on land use and elimination of pathways.

A suggestion – which has a dual purpose, is to have an IDEM representative and several participants of the RISC Work Group discuss and receive advice from the EQSC on how RISC is envisioned to affect all program areas which have associated cleanup requirements, in particular the Brownfields/VRP association. This would also act to educate members of

⁵ *Comparative Analysis of VRP Cleanup Goals to RISC Tier 1 Closure Levels*, Thermoretec, November 1999.

the EQSC on the risk based remediation process – which would be an asset if there is a decision to pursue legislation on this issue, and while complicated, it is an iterative logical process.

Additionally – with respect to a legislative initiative for risk based cleanups, as described, there are numerous models of states that have successfully passed legislation from which Indiana could draw for ideas as described in the three evaluated. The intent of *legislation is to codify and give direction to the regulatory agency on key policy issues such as has occurred in the statutes described*; but depending on the – admittedly currently unknown – impact to the VRP by RISC, the potential short term decision may be to determine if securing the Brownfields Program by modifying the VRP statute would act as a targeted “fix” or as an alternative, modify the Brownfields Statute to incorporate a cleanup program.

It is obvious that the development of RISC is going forward – our suggestion, as previously indicated, is to continue to monitor the process; it may be that Indiana takes the same tact by which Illinois created their Brownfields statute – by creating policy first and then pass in statute. There may be an advantage to this for IDEM in that a statute would clearly outline their authority since they don’t believe they currently have the authority to require that deed restrictions be placed on property.

Attachment

Attachment I - Selected Comparative Analysis - Brownfields Statutes**Pennsylvania¹****State Establishment/determination of acceptable risk/risk based remediation objectives**

Three Tiers

1. Background
2. Statewide health standards
Established by the Environmental Quality Board - "which shall be no more stringent than those adopted by the Federal Government"
For the residential standard, the leachate produced via SW 846-1312 or "valid peer reviewed scientific method"
3. Site Specific Standards
Carcinogens = 10^{-6}
Cumulative Carcinogens = 10^{-5}
Hazard Index = 1
Use of appropriate statistical techniques including, but not limited to Monte Carlo simulations, to establish statistically valid cleanup standards.

Groundwater Standards

Used for drinking water or agricultural purposes = cleanup to MCL or HAL for drinking water.

1. Statewide health standards
"The concentration of a regulated substance in groundwater in aquifers used or currently planned to be used for drinking water or for agricultural purposes shall comply with the maximum contaminant level or health advisory level established for drinking water. If the groundwater at the site has naturally occurring background total dissolved solids concentrations greater than 2,500 milligrams per liter, the remediation standard for a regulated substance dissolved in the groundwater may be adjusted by multiplying the medium-specific concentration for groundwater in aquifers by 100. The resulting value becomes the maximum contaminant level for groundwater."
2. Site Specific Standards
"The current and probable future use of groundwater shall be identified and protected. Groundwater that has a background total dissolved solids content greater than 2,500 milligrams per liter or is not capable of transmitting water to a pumping well in usable and sustainable quantities shall not be considered a current or potential source of drinking water; Site-specific sources of contaminants and potential receptors shall be identified; Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods; Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by ingestion or other avenues to protect human health and the environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve this equivalent level of protection."

Background

Defined in statute = concentration at the site not relative to release of regulated substance at the site

Institutional Controls

Allowable for site specific standard

Deed Restrictions/Acknowledgment

Tied to site specific cleanups - authority for Department in statute

Point of Compliance

For determining compliance with groundwater standards, "the property boundary at the time the contamination is discovered or such point beyond the property boundary as the Department may deem appropriate"

Determining Attainment

For the purpose of determining attainment... "the concentration of regulated substance shall not be required to be less than the PQLS as determined by EPA"

Applicability to other Program Areas (e.g. RCRA, Superfund, etc.)

Provisions of Act shall not prevent Department from enforcing numeric standards as established by the Federal Government as a condition to receive delegation, primary or Federal funds; not used on NPL sites or OPA spill response sites; used as an ARAR or to be considered for RCRA cleanups

Board Established

Thirteen member Cleanup Standards Advisory Board for the purpose of assisting the department in developing health standards, appropriate statistical techniques, risk factors, etc. to implement provisions of Act

Miscellaneous Provisions

May waive - in writing - where compliance with a requirement will result in greater risk to human health and the environment than alternative option

Illinois²**State Establishment/determination of acceptable risk/risk based remediation objectives**

Three Tiers - Adopted by Board in regulation addressing exposures by ingestion, inhalation and groundwater "shall not require remediation of regulated substances to levels less than area background levels"

¹ Pennsylvania Department of Environmental Protection - Act 2 of 1995, The Land Recycling and Environmental Remediation and Standards Act

² Illinois Environmental Act, Title XVII - Site Remediation Program

1. Tier I
Tables of numeric values for soil and groundwater - dependent upon potential pathways and land uses (residential and non-residential).
Carcinogens = 10^{-4} to 10^{-6}
Residential = 10^{-6}
2. Tier II
May alter input variables based on site specific features/considerations
3. Tier III
Different remediation objectives for residential and non-residential land uses; use of site specific data; use of appropriate statistical methods; exposure factors for current and future land use; institutional and legal controls; the Board's future adoption of methodology (of this section) shall in no way preclude use of naturally recognized methodology

Groundwater Standards

Class I groundwater = Class I Potable Resource groundwater criteria; Class III groundwater = Special Resource Groundwater Criteria (both set forth in rules adopted under Illinois Groundwater Protection Act)

Background

Defined in statute = concentration of regulation substances consistently present in the vicinity of the site that are the result of natural conditions or human activities and not solely the result of releases at the site

Institutional Controls

Allowable for Tier III - characterized as "land use limitations" – cleanup must be reviewed (including additional investigation) if land use changes

Deed Restrictions/Acknowledgment

Allowable for Tier III

Determining Attainment

Remedial investigation and contents of reports defined in statute - all to be conducted or prepared under the supervision of a Licensed Professional Engineer (LPE)

Applicability to Other Program Areas (e.g. RCRA, Superfund, etc.)

Not used on NPL sites, RCRA permitted, TSDs or any site subject to closure requirements under federal or state solid or hazardous waste laws, or subject to federal or state UST laws, investigation remediation ordered by federal court; however, to the extent allowed by federal law, sites previously listed may use the provisions of the Act including establishing risk-based remediation objectives

Board Established

Creates Site Remediation Advisory Committee (Consists of e.g. Chamber of Commerce, Manufacturer's Association, waste management, environmental advocacy, community development, etc.) for continuing review and evaluation of program - also proposed rules prescribing procedures and standards for administration of Act

Miscellaneous Provisions

Creates the ability to contract with a Review and Evaluation Licensed Professional Engineer (RELPE) to submit reports directly to the Agency; takes assignments and works on behalf of the Agency but the Agency retains authority to approve or disapprove all plans and/or reports

Michigan³

State Establishment/determination of acceptable risk/risk based remediation objectives

Defined by category based on option of person proposing remedial action subject to department approval, categories include: residential, commercial, recreational, industrial, other, limited use, cancer risk = 95% upper bound of 1 per 100,000 based on generic set of exposure assumptions determined by the department for each category; non cancer = HI of 1.0

Groundwater Standards

State drinking water standard established by section 5 of the Safe Drinking Water Act, Act No. 399; or criteria for adverse aesthetic characteristics derived pursuant to R299.5709 unless the department determines compliance (with above standards) not necessary because the aquifer is restricted pursuant to land use, resource use, containment, exposure barrier as described in restrictive covenant

Legislative Funding and Declaration

The Act provides for a method of eliminating the danger of environmental contamination caused by hazardous substances; to provide appropriate response activity; intended to foster redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites; that in implementing (this Act) the department shall act reasonably in its exercise of professional judgement

Duties of Department

- Develops 1 or more risk assessment models for hazards posed to public health, safety or welfare or environment for each site based on initial scoring - submits list to legislature every 4 years with status and additions
- Creates brownfields redevelopment board (DEQ, OMB, Jobs Commission).
- Owner/operator of facility must prevent exacerbation; exercise due care in response activities; a person who violates these criteria is liable for response action and natural resource damage and fines
- Cleanup and redevelopment fund created in state treasury - state site cleanup fund created and funded at \$20,000,000.00 in 1994
- Department to expend money from cleanup fund at facilities where state is owner/operator (increase created by shift to causation -based liability)
- Brownfields program only, act does not appear to extend to other program areas

³ Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994 (Excerpts)

Indiana Department of
Environmental
Management

Memo

To: Senator Beverly Gard, Chairperson
Quality Service Council (EQSC)

From: Lori F. Kaplan, Commissioner

Date: 12/07/99

Re: Draft 1999 Final Report of the EQSC

Environmental

First, I would like to thank you for your leadership as Chairperson for the EQSC. The council members have studied a wide array of topics this year, which affect IDEM on many different levels. The open forum and opportunity to comment on all issues before the EQSC is greatly appreciated. After perusing through the Draft 1999 Final Report of the EQSC, I wanted to let you know that IDEM generally supports the report in whole. However, I would like to express our thoughts and concerns on a few of the final recommendations for the record.

IDEM and Public Health Subcommittee Report: Under Recommendation 2 of Action 2, page 23, IDEM recommends that the amount of funding available for expanding the Cancer Registry and other parts of the Pilot Database, should be discussed in the next long session during the budget discussions. IDEM does not dispute the value of such a registry or pilot database; however, the cost associated with its creation and maintenance could be significant. Accordingly, the matter of funding such a registry and database merits further examination. Additionally, a State Geographic Information System Committee does currently exist and we would urge that information be sought regarding this Committee prior to any legislative action. Finally, IDEM does not have expertise on tobacco and therefore does not endorse or reject the legislative recommendations on tobacco.

Land and Water Subcommittee Report:

RISC: Under Action 4, page 25, IDEM agrees that many projects should be ‘grandfathered’ from the new guidance during the initial transition period. However, grandfathering should be a case-by-case decision based on the specifics of the situation rather than automatic in all instances.

Antidegradation, Sediment and Biological Criteria: Under Action 4, page 26, IDEM continues to state its concerns that the recommendation for antidegradation for non-BCCs, sediment and biological criteria are premature. The EQSC subcommittee and the Water Quality Advisory Group have not yet had the opportunity to substantively discuss these issues. IDEM recommends the Water Quality Advisory Group complete their discussions before specific recommendations are made on this subject.

Water Quality Data Task Force: Under Action 4, page 27, IDEM already has several workgroups in place that could address the issues proposed to be examined by such a task force; such as the Wet Weather Technical Advisory Group and the Water Quality Advisory Group. Rather than creating yet another group, that would likely drain membership from already existing groups, it is suggested that the scope of an existing group be expanded to include water quality data issues.

IDEM Administrative Issues Subcommittee: Under Recommendation 6, page 27, IDEM would recommend that the Administrative Subcommittee complete its work by the end of March 2000 in order for the agency to prepare for the upcoming budget year.

Again, thank you for the opportunity to address our thoughts and concerns through you and the EQSC. Feel free to call me at 232-8611 if you would like to discuss these items further.